UNITED STATES DISTRICT COURT DISTRICT OF MARYLAND

Southern Division

JEFF SCHMIDT,

Plaintiff,

v.

AMERICAN INSTITUTE OF PHYSICS,

Defendant.

Civil Action No.: 8:04-cv-3774 (AW)

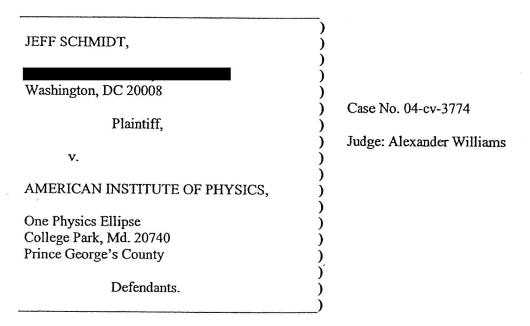
JOINT APPENDIX

Submitted to Harold Himmelman

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND



PLAINTIFF'S FIRST AMENDED AND CONSOLIDATED COMPLAINT

Plaintiff, by and through the undersigned attorneys, alleges as follows:

I. NATURE OF ACTION

- 1. Plaintiff Dr. Jeff Schmidt ("Dr. Schmidt") is a white citizen of the United States and former employee of defendant American Institute of Physics ("AIP"). He brings this action for breach of contract, detrimental reliance, breach of implied covenant of good faith and fair dealing, and violation of 42 U.S.C. §§ 1981 and 1983 to seek redress for AIP's retaliatory actions, including the silencing and ultimate firing of plaintiff due to his participation in statutorily protected activity, namely attempting to stop AIP's discriminatory hiring practices. On the basis of these violations, Dr. Schmidt seeks reinstatement, back pay, front pay, compensatory damages, and punitive damages.
- 2. Plaintiff Dr. Schmidt also brings this action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. ("Title VII") to seek redress for AIP's unlawful discriminatory employment practices committed by AIP in retaliation for plaintiff's participation in

statutorily protected activity, namely attempting to stop AIP's discriminatory hiring practices. On the basis of these violations, Dr. Schmidt seeks reinstatement, back pay, front pay, compensatory damages, and punitive damages.

II. JURISDICTION AND VENUE

- 3. This Court has jurisdiction over plaintiff's claims under 42 U.S.C. §§ 1981 and 1983 pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) (1993). This Court has jurisdiction over plaintiff's claims under Title VII pursuant to 42 U.S.C. §§ 2000e 5(f) through (k) and 16(c).
- 4. Plaintiff has fully and completely exhausted all administrative remedies required as a condition precedent to this lawsuit. On July 20, 2004, Dr. Schmidt received a Notice of Suit Rights from the U.S. Equal Employment Opportunity Commission's acting director Marie M. Tomasso, attached hereto as Exhibit A.
- 5. This case was originally filed in the United States District Court for the District of Columbia. On June 28, 2004, that court transferred the common law and 42 U.S.C. § 1983 claims to the United States District Court for the District of Maryland. The parties consented to the transfer of the 42 U.S.C. § 1981 claim.

III. PARTIES

- 6. Plaintiff Jeff Schmidt is a white citizen of the United States and a resident of the District of Columbia. Dr. Schmidt commenced employment with AIP at its New York, New York location in March 1981. Dr. Schmidt worked at AIP's *Physics Today* magazine as an Associate Editor, then as a Senior Associate Editor. Dr. Schmidt moved to Washington, D.C. in October 1993. He worked at AIP's main office in College Park, Maryland and in Washington, D.C. from October 1993 until he was summarily dismissed on May 31, 2000.
- 7. Defendant AIP is a not-for-profit membership corporation that is incorporated in the State of New York and has its principal place of business in College Park, Maryland. AIP has appointed a

registered agent in Maryland for the service of process. AIP publishes, edits, sells and distributes scientific journals, including the magazine *Physics Today*. AIP sells and distributes its publications throughout the United States and internationally.

IV. AIP MANAGEMENT

- 8. Marc H. Brodsky is AIP's Executive Director and CEO. Mr. Brodsky is the direct supervisor of Dr. James H. Stith. At all relevant times, Mr. Brodsky was and still is responsible for the management and operation of AIP and is responsible for all other employment related issues at AIP. In addition, Mr. Brodsky is a policymaker charged with the responsibility of ensuring that employees are not subjected to discrimination or harassment. Moreover, Mr. Brodsky is responsible for properly training and supervising employees at AIP.
- 9. Theresa Braun is AIP's Vice President, Human Resources. She has been employed with AIP for 24 years. She reports directly to Mr. Brodsky. Ms. Braun was and still is an official charged with the responsibility of hiring, promoting and disciplining of employees and with the handling of all other employment related issues. Ms. Braun is also a policymaker responsible for ensuring that employees are not subjected to discrimination or harassment. Additionally, Ms. Braun is responsible for properly training and supervising employees at AIP.
- 10. Dr. James H. Stith is AIP's Vice President, Physics Resources. He has been employed with AIP for five and one-half years. He reports directly to Mr. Brodsky. Dr. Stith was and still is an official responsible for the management of several departments within AIP, including the *Physics Today* division. Dr. Stith is also charged with the responsibility of hiring, promoting and disciplining employees, and with the handling of all other employment related issues. Dr. Stith is a policymaker charged with the responsibility of ensuring that employees are not subjected to discrimination or harassment. Moreover, Dr. Stith is responsible for properly training and supervising employees at AIP.
- 11. Randolph A. Nanna is Publisher of *Physics Today*. Mr. Nanna reports to Dr. Stith. AIP hired Mr. Nanna in or around November 15, 1999, to replace Charles Harris, whom AIP fired in or

around March 2, 1999. As Publisher of *Physics Today*, Mr. Nanna was and still is an official responsible for the management of *Physics Today*. Mr. Nanna is also charged with the responsibility of hiring, promoting and disciplining employees, and with the handling of all other employment related issues. Additionally, Mr. Nanna is a policymaker charged with the responsibility of ensuring that employees are not subjected to discrimination or harassment. Mr. Nanna is also responsible for properly training and supervising employees within *Physics Today*.

12. Stephen G. Benka was Dr. Schmidt's direct supervisor from in or around September 1994 until Dr. Schmidt's dismissal. Mr. Benka is the Editor of *Physics Today*. He reports to Mr. Nanna. He formerly reported to Mr. Harris. Mr. Benka was and still is an official responsible for the management of *Physics Today*. In addition, Mr. Benka is charged with the responsibility of hiring, promoting and disciplining employees, and with the handling of all other employment related issues. Mr. Benka is also a policymaker charged with the responsibility of ensuring that employees are not subjected to discrimination or harassment.

V. <u>ALLEGATIONS</u>

- 13. Dr. Schmidt was employed as an editor by AIP from March 17, 1981, until May 31, 2000. During his employment, Dr. Schmidt became concerned about the increasing lack of racial diversity at AIP at the professional level. Dr. Schmidt repeatedly voiced his concerns to his managers at *Physics Today* and then to higher AIP management. Dr. Schmidt complained in writing of the "de facto 'whites only' hiring policy at *Physics Today*." By the time of Dr. Schmidt's dismissal, AIP's employment practices had left *Physics Today* with an all-white professional staff of sixteen editors and writers.
- 14. Dr. Schmidt consistently pressured AIP's management to live up to its claim that AIP was an equal opportunity employer and to increase the racial diversity among its professional employees. Dr. Schmidt also routinely presented items to AIP management in an effort to improve

working conditions and employee morale at AIP. At times, he enlisted some of his co-workers to join in his efforts. Management viewed Dr. Schmidt's efforts as "nonproductive" and "disruptive."

- 15. Physics Today publisher Charles Harris, in a conversation with Dr. Schmidt, remarked that a single dissident can adversely affect an entire workplace. This conversation took place in 1994, shortly after Mr. Harris began working at Physics Today. On or around March 8, 1996, Mr. Harris raised Dr. Schmidt's job performance rating from "Meets Job Requirements" to "Exceeds Job Requirements," following a meeting with Dr. Schmidt. Mr. Harris commented to Dr. Schmidt that his only reservation was that Dr. Schmidt's higher performance rating would add a year to the time it would take to terminate him if AIP ever decided to do so.
- 16. On October 4, 1996, Dr. Schmidt complained to the *Physics Today* advisory committee about unjustified salary differentials between the only minority professional, Jean A. Kumagai, and the white employees at her level. On or about November 15, 1996, the committee reported the salary inequity problem to AIP management. AIP was forced to award Ms. Kumagai a 25% salary increase. AIP management voiced displeasure with Dr. Schmidt's efforts.
- 17. On November 15, 1996, Dr. Schmidt led an effort by some staff members to request in writing that AIP change its hiring practices to "increase diversity of *Physics Today* staff."
- 18. On November 26 and 27, 1996, Dr. Schmidt and coworker Jean Kumagai successfully pressured AIP into sending a job-opening announcement to minority group organizations. Dr. Schmidt and Ms. Kumagai also updated the *Physics Today* staff on the status of equal employment opportunity efforts related to the job opening.
- 19. Physics Today publisher Charles Harris communicated to Dr. Schmidt and other staff members that he was strongly opposed to their activities, which had increased significantly in 1996, and which included criticism of the discriminatory hiring practices at AIP.
- 20. In April 1997, after AIP had interviewed three white males for an open position, Dr. Schmidt argued strongly at a *Physics Today* staff meeting that the promising minority applicants should

be interviewed as well. *Physics Today* Publisher Charles Harris and Editor Stephen G. Benka denied Dr. Schmidt's request. Approximately one week later, Mr. Benka announced that the magazine had hired one of the white males and that he had phoned six "very promising" applicants, mainly minority group members, but only to tell them that he would consider them for future openings.

- 21. In late July 1997, Dr. Schmidt began working four days a week from his home office in Washington, D.C.
- 22. On August 25, 1997, Dr. Schmidt discovered that Mr. Benka had changed Dr. Schmidt's job description without Dr. Schmidt's knowledge and following repeated requests from Dr. Schmidt that Mr. Benka provide him with more articles to edit. Dr. Schmidt's new job description made him responsible for getting some articles for the magazine. With this added responsibility, Dr. Schmidt's article editing quota was decreased from 16 articles per year to 14 articles per year.
- 23. At a staff retreat in Washington, D.C. on September 25, 1997, *Physics Today* Publisher Charles Harris shouted at Dr. Schmidt to prevent him from asking a question. Mr. Harris ordered Dr. Schmidt to keep quiet and did not allow the staff to ask questions during the entire day. A few days later, Mr. Harris indicated to Dr. Schmidt that he thought Dr. Schmidt's request at the meeting was an attempt to raise workplace issues of concern to Dr. Schmidt, which Mr. Harris knew most prominently included diversity issues.
- 24. On October 1, 1997, Messrs. Harris and Benka delivered a notice to Dr. Schmidt stating that management would no longer tolerate actions it deemed to be "counterproductive." This notice was the equivalent of a gag order on Dr. Schmidt. AIP clearly intended to curtail Dr. Schmidt's efforts, which had focused most prominently on the issue of equal employment opportunity and the lack of staff diversity.
- 25. Frustrated by the lack of response to his repeated attempts to address AIP's discriminatory hiring practices, on October 17, 1997, Dr. Schmidt met with the *Physics Today* advisory committee and objected to the magazine's discriminatory employment practices and failure to live up to

its claim that it was an equal opportunity employer. In the following weeks and months, Mr. Harris continuously and harshly criticized Dr. Schmidt for his role in presenting these issues to the *Physics Today* advisory committee.

- 26. On October 24, 1997, AIP's Executive Director and CEO Marc H. Brodsky accused Dr. Schmidt of leveling an unfounded charge of discrimination regarding *Physics Today's* hiring practices. Mr. Brodsky demanded that Dr. Schmidt prove that AIP's hiring practices were discriminatory.
- 27. On November 5, 1997, in response to Mr. Brodsky's demand, Dr. Schmidt met with Mr. Brodsky and gave him a memorandum that outlined AIP and *Physics Today*'s discriminatory hiring practices. Mr. Brodsky said he would investigate and get back to Dr. Schmidt. The memorandum included the fact that AIP had represented to the federal government, in a report, that AIP would conduct equal employment opportunity and affirmative action training for all AIP employees. Dr. Schmidt noted that AIP had not conducted the promised training. Mr. Brodsky disputed that the training had not been provided, saying that he might have mentioned diversity during his biannual one-hour question and answer session for AIP employees. Dr. Schmidt had attended that session and heard no mention of equal employment opportunity or diversity. In any case, mentioning equal employment opportunity falls far short of serious, constructive training.
- 28. Following Dr. Schmidt's November 5, 1997, meeting with Mr. Brodsky, Dr. Schmidt sent Mr. Brodsky a memorandum suggesting that Mr. Brodsky speak with the only minority group member of the *Physics Today* staff, Jean Kumagai, about discrimination at the magazine. Mr. Brodsky did not do that. His failure to speak with Ms. Kumagai further demonstrated AIP's lack of interest in fulfilling its equal employment opportunity obligation.
- 29. On December 2, 1997, AIP sent Dr. Schmidt a memorandum titled "rescindment," rescinding the gag order that it had placed on him. AIP rescinded the gag order after many staff members openly criticized it.

- 30. On January 19, 1998, Mr. Brodsky informed Dr. Schmidt that he was still looking into the equal employment opportunity issue, as he had promised on November 5, 1997. This was more than two months after Dr. Schmidt had brought the problem to Mr. Brodsky's attention and nearly two years after AIP had agreed to conduct equal opportunity and affirmative action training. AIP had made no progress or taken a single step to address the diversity or hiring practices problem at *Physics Today* despite repeated requests by Dr. Schmidt and despite AIP's representation to the federal government.
- 31. AIP's retaliatory actions continued. On January 22, 1998, Mr. Harris refused Dr. Schmidt's request for relief from the pressure to take on additional clerical work. Mr. Harris told Dr. Schmidt that his activities in the previous year made him "unsympathetic" to Dr. Schmidt's requests. This is a clear example of retaliation against Dr. Schmidt.
- 32. On January 28, 1998, after normal working hours, Mr. Benka broke up two private conversations between Dr. Schmidt and coworker Toni Feder. When Dr. Schmidt asked Mr. Benka why he disrupted the conversations, Mr. Benka said that he did not want any activities similar to what had occurred in the previous year. Mr. Benka's behavior and explanation indicated that Dr. Schmidt's supervisors viewed Dr. Schmidt's attempts to raise awareness about the lack of diversity at *Physics Today* in a negative light.
- 33. Following the disruption of Dr. Schmidt's and Ms. Feder's private conversations, Mr. Benka stated that all private conversations at work would be subject to monitoring by management. The ban on private conversations appeared to be aimed primarily at Dr. Schmidt and was an attempt to prevent him and other employees from criticizing management practices, including its discriminatory hiring practices, or attempting to change them.
- 34. On March 20, 1998, Dr. Schmidt met with Mr. Brodsky and pressed him to conduct the equal opportunity staff training that AIP had told the government it would conduct. Mr. Brodsky said he would look into it, but AIP still failed to provide the training. At that time, *Physics Today* had an all-white staff of eighteen employees, with one exception, an Asian-American woman. The meeting ended

after Dr. Schmidt reiterated his belief that a serious problem existed in the hiring practices at *Physics Today*. Mr. Brodsky told Dr. Schmidt that some of Dr. Schmidt's activities were "counterproductive."

- 35. On March 24, 1998, Dr. Schmidt met with Mr. Benka to discuss his 1998 performance review. Mr. Benka focused on Dr. Schmidt's activities, in particular around the 1996 staff retreat, where Dr. Schmidt drew attention to the lack of diversity at *Physics Today* and raised other issues. Mr. Benka focused on the 1996 events in Dr. Schmidt's 1998 performance review despite the fact that they had occurred nearly a year and a half earlier, before the period supposedly covered by the performance review. Mr. Benka called Dr. Schmidt's activities "disruptive" and made it clear that Dr. Schmidt's actions would not be forgotten, no matter how long ago they occurred. AIP lowered Dr. Schmidt's performance rating from "Exceeds Job Requirements" to "Meets Job Requirements" and instituted what it called "new demands" on Dr. Schmidt, including a 28% increase in his workload. Mr. Benka warned Dr. Schmidt that any "disruptive" actions would not be tolerated in the future.
- 36. On April 27, 1998, Dr. Schmidt appealed his 1998 performance review to AIP's Director of Human Resources, Theresa Braun, and Director of Physics Programs, James H. Stith. Dr. Schmidt noted in his appeal that he received a lower performance rating as punishment for his activities, whose biggest focus was attempting to change AIP's discriminatory hiring practices, and not as a result of the quality or quantity of his work. Also included in Dr. Schmidt's appeal were supporting documents from article authors commending Dr. Schmidt on the quality of his work. Throughout his tenure at *Physics Today*, Dr. Schmidt received praise for his work from prominent physicists and from his supervisors.
- 37. On or about April 27, 1998, Dr. Schmidt circulated his appeal memorandum to twelve coworkers.
- 38. On June 25, 1998, Dr. Stith denied Dr. Schmidt's appeal requesting the correction of false statements in his performance review. Dr. Stith cited Dr. Schmidt's activities as the reason for the denial and as the reason for Dr. Schmidt's lowered rating. Dr. Stith told Dr. Schmidt that when he did things

that his supervisors would be happier that he not do, he had to be willing to pay a penalty if it was imposed, even if his actions were right.

- 39. On June 25, 1998, Dr. Schmidt appealed the ban on private conversations to Dr. Stith. Dr. Stith told Dr. Schmidt that he knew about the ban, which was described in Dr. Schmidt's April 27, 1998, performance review appeal. Dr. Schmidt asked Dr. Stith to retract it. Dr. Stith promised to look into it, but he never lifted the ban. This amounted to executive-level ratification and approval of the ban, which was a retaliatory measure aimed mainly at Dr. Schmidt.
- 40. From mid-December 1998 to mid-June 1999, Dr. Schmidt took a six-month unpaid leave of absence. Dr. Schmidt used this time to work on a book.
- 41. When Dr. Schmidt returned to work in mid-June 1999, Mr. Benka criticized him harshly for showing coworkers his 1998 performance review appeal 14 months earlier. It was common for *Physics Today* staff members to discuss their performance reviews with their coworkers. Mr. Benka told Dr. Schmidt that he was lucky to still be employed after showing his coworkers the appeal. The biggest section of the appeal focused on the issue of discrimination in employment practices at *Physics Today*.
- 42. On June 29, 1999, Dr. Schmidt requested authorization to work on a 2/3-time basis. This request was granted on August 9, 1999.
- 43. AIP continued to retaliate against Dr. Schmidt with inaccurate, unfair and punitive performance evaluations. In 1997, Dr. Schmidt received a rating of "Exceeds Job Requirements," but the following year he received the lower rating of "Meets Job Requirements." Dr. Schmidt received the lower rating even though there had been no reduction in the quality or quantity of his work. In fact, he had done more work than the previous year. Dr. Schmidt received the lower rating after persistently bringing his concerns about AIP's diversity problem to the attention of AIP management and after being told repeatedly that such actions were disruptive.
- 44. In 1999, AIP again gave Dr. Schmidt a performance rating lower than "Exceeds Job Requirements." The 1999 review criticized Dr. Schmidt for something he did 16 months earlier:

circulate to the staff his 1998 performance review appeal, which documented Dr. Schmidt's belief that AIP's hiring practices were discriminatory. It was precisely the document's focus on such issues that bothered Mr. Benka, who told Dr. Schmidt on August 19, 1999, "What was extremely destructive was how much of it had *nothing* to do with the review." AIP criticized Dr. Schmidt for circulating that document and said in his 1999 performance review that such action undermined the magazine's "editorial effort" and was "unacceptable." Additionally, the review changed the work accounting method previously employed by AIP and inaccurately claimed that Dr. Schmidt had failed to meet work quantity standards set by AIP.

- 45. Dr. Schmidt subsequently met with Mr. Benka to discuss his 1999 performance review. Mr. Benka refused to make any changes and told Dr. Schmidt to "contribute productively, constructively and positively to the mission of the magazine."
- 46. On September 20, 1999, Dr. Schmidt, with the approval of AIP management, began working 2/3-time with full benefits.
- 47. On or about November 24, 1999, Jean Kumagai, the only minority group member on *Physics Today*'s professional staff, left the organization, in part, because of AIP's discriminatory practices. Her resignation left *Physics Today* with an all-white professional staff.
- 48. On or around November 9, 1999, Dr. Schmidt requested permission to either use his accumulated vacation time or carry it over to the year 2000. AIP management failed to respond to Dr. Schmidt's request until a month later, which did not leave him enough time to use the vacation hours. This forced Dr. Schmidt to forfeit vacation time that he had earned. AIP's actions were retaliatory against Dr. Schmidt, as evidenced by the fact that Dr. Schmidt's coworker Paul Elliott, who suffered the same lack of response to his vacation carry-over request, was permitted to carry over all of his unused vacation time. The difference between the two employees was Dr. Schmidt's outspoken questioning of AIP's practices, particularly its discriminatory employment practices. Top AIP management instructed Mr. Elliott not to tell any of his coworkers of his treatment.

- 49. On April 5, 2000, Dr. Schmidt met with Mr. Benka and Mr. Nanna to discuss the vacation carry-over problem. Mr. Nanna admitted that AIP had made a mistake, but he refused to take corrective action for Dr. Schmidt. At that meeting, Mr. Benka praised Dr. Schmidt's work for the magazine.
- 50. Upon information and belief: On, May 22, 2000, Mr. Benka learned that Dr. Schmidt had written a book, titled *Disciplined Minds*, when Mr. Benka noticed a *Physics Today* staff member reading an article about the book in the "Hot Type" column of the May 26, 2000, issue of the *Chronicle of Higher Education*.
- 51. On May 30, 2000, Dr. Schmidt learned that management was going to act against him and cite his book as the reason. As Dr. Schmidt was leaving for the day, Mr. Benka stopped him to ensure that he was not taking any work files. That was the first time Mr. Benka had ever done that.
- 52. By May 31, 2000, Dr. Schmidt had completed his entire annual review period work quota in the first ten months of the period.
- 53. On May 31, 2000, *Physics Today* fired Dr. Schmidt, supposedly for writing some of *Disciplined Minds* at the office. AIP cited the book's opening line about "stolen time" as the reason for the termination. The quoted passage relied on by AIP is literary hyperbole and a literary nod to the book titled *Steal This Book*.
- 54. The fact that Dr. Schmidt had completed his annual work quota at the time that he was fired dispels any claim by AIP that Dr. Schmidt "stole time" from AIP or worked on his book instead of completing his assignments. Dr. Schmidt's workload quota with AIP mandated that he complete a set amount of work during the year. By May 31, 2000, Dr. Schmidt had not only met his work quota, but had done so two full months ahead of schedule. Thus, AIP's contention that Dr. Schmidt failed to meet his requirements and that he "stole time" are mere pretexts for AIP's real retaliatory reasons for terminating Dr. Schmidt's employment. AIP saw an opportunity to rid itself of Dr. Schmidt and the difficult issues he raised, such as AIP's discriminatory employment practices.

- 55. By letter dated April 19, 2001, Dr. Schmidt requested that the President of the University of Maryland reinstate his university privileges in light of the circumstances of his firing.
- 56. On April 8, 2004, the Executive Committee of the University of Maryland Senate decided not to refer the matter to the Campus Affairs Committee for review and did not reinstate Dr. Schmidt's university privileges.

COUNT I

(Breach of Contract)

- 57. Dr. Schmidt realleges the foregoing paragraphs 1 through 56 as if stated in full herein.
- 58. AIP's conduct, as described in the foregoing paragraphs, constitutes a breach of the terms of its stated policy with its employees and with the terms of Dr. Schmidt's employment.
- 59. In response to employees' demand for greater job security, and to address employees' fears that they might be penalized for expressing concerns about the workplace and AIP policies, AIP promised employees that job security would be based on job performance and that speaking freely about workplace concerns would not jeopardize one's job. AIP repeatedly expressed this policy orally and in writing.
- 60. After receiving that promise, and in consideration for AIP's job security policy, Dr. Schmidt continued to work for the company.
- 61. AIP's promise regarding employee evaluation and employee freedom of expression became a term of Dr. Schmidt's employment with AIP.
- 62. Throughout his 19-year career at AIP, Dr. Schmidt consistently received performance ratings of "Meets Job Requirements" or "Exceeds Job Requirements."
- 63. On May 31, 2000, AIP fired Dr. Schmidt for reasons other than his job performance, thereby materially breaching its contract with Dr. Schmidt.

64. As a direct and foreseeable result of AIP's breach of its job security policy and terms of Dr. Schmidt's employment, Dr. Schmidt suffered substantial damages.

COUNT II

(Detrimental Reliance)

- 65. Dr. Schmidt realleges the foregoing paragraphs 1 through 64 as if stated in full herein.
- 66. In response to employees' demand for greater job security, AIP promised employees that job security would be based on job performance and that speaking freely about workplace concerns would not jeopardize one's job.
- 67. Reasonably relying on this promise, Dr. Schmidt continued to work for AIP and freely expressed his concerns regarding the workplace.
- 68. As a result of Dr. Schmidt freely expressing his views and for reasons other than his job performance, AIP terminated his employment on May 31, 2000.
- 69. Consequently, Dr. Schmidt suffered and continues to suffer harm, including but not limited to economic loss, humiliation, embarrassment, emotional distress and mental anguish.

COUNT III

(Breach of Implied Covenant of Good Faith and Fair Dealing)

- 70. Dr. Schmidt realleges the foregoing paragraphs 1 through 69 as if stated in full herein.
- 71. AIP had an obligation to act in good faith and deal fairly with Dr. Schmidt.
- 72. AIP violated that duty and acted in bad faith by terminating Dr. Schmidt's employment for reasons outside of his job performance.
- 73. As a direct result of AIP's breach of its implied duty to act in good faith and to deal fairly, Dr. Schmidt suffered and continues to suffer harm including but not limited to economic loss, humiliation, embarrassment, emotional distress and mental anguish.

COUNT IV

(42 U.S.C. § 1981)

- 74. Dr. Schmidt realleges the foregoing paragraphs 1 through 73 as if stated in full herein.
- 75. The conduct engaged in by the defendants, as set forth herein, constitutes retaliation against Dr. Schmidt for protesting AIP's discriminatory practices that denied minority group members the right to make and enforce contracts and enjoy the full and equal benefit of all laws and proceedings for the security of persons as enjoyed by white citizens, in violation of 42 U.S.C. § 1981.
- 76. In the actions described above, AIP acted intentionally, maliciously, and with willful, malicious, wanton and reckless disregard for Dr. Schmidt's federally protected rights.
- 77. As a result of the acts of AIP described above, Dr. Schmidt suffered, and continues to suffer harm, including but not limited to economic loss, humiliation, embarrassment, emotional distress and mental anguish.

COUNT V

(42 U.S.C. § 1983)

- 78. Dr. Schmidt realleges the foregoing paragraphs 1 through 77 as if stated in full herein.
- 79. AIP and the University of Maryland are parties to an agreement under which AIP is an affiliate of the University of Maryland, a public institution, and the two entities collaborate and work jointly on projects. AIP employees receive faculty-level university privileges, including access to university facilities and university photo identification cards. Under the affiliation agreement, AIP physicists may be offered adjunct or visiting faculty status.
- 80. The university delegated to AIP the power to grant access to its state libraries, state computers, and other state facilities without review by the university, and to revoke such access without review by the university. Thus, AIP operated as a state actor in revoking Dr. Schmidt's state university privileges.

- 81. AIP violated Dr. Schmidt's First Amendment right of free expression when it terminated his employment and revoked his state university library privileges, state university computer account and access to other state university facilities for questioning practices in the workplace. AIP violated Dr. Schmidt's procedural due process rights when it summarily terminated his employment in breach of his employment contract.
- 82. The terms of the affiliation agreement entwine AIP and the University of Maryland. Thus, AIP operated as a state actor in firing Dr. Schmidt and violated his First Amendment and procedural due process rights when it terminated his employment.
- 83. AIP officials intentionally committed, condoned or were deliberately indifferent to the aforementioned violations of Dr. Schmidt's constitutional rights. Such deliberate indifference may be inferred in the following ways:
 - a. Defendants had a custom or practice of harassing or retaliating against plaintiff for his questioning of discriminatory practices within the workplace and exercising his protected rights under the First Amendment. The discriminatory and retaliatory practices were so persistent and widespread that they constitute the constructive acquiescence of policymakers.
 - b. Supervisors failed to properly investigate and address allegations of discrimination, retaliation or harassment.
 - c. Inadequate training or supervision was so likely to result in the discrimination, retaliation or harassment that policymakers can reasonably be said to have been deliberately indifferent to the need to provide better training or supervision.
 - Policymakers engaged in or tacitly condoned the discrimination, retaliation or harassment.

- 84. The University of Maryland acquiesced and participated in and sanctioned the violation of Dr. Schmidt's protected First Amendment rights when it refused to review the actions of its affiliate, AIP, and did not reinstate Dr. Schmidt's university privileges.
- 85. As a result of AIP's violation of 42 U.S.C. § 1983, Dr. Schmidt suffered and continues to suffer harm, including but not limited to economic loss, humiliation, embarrassment, emotional distress and mental anguish.

COUNT VI

(42 U.S.C. § 2000e et seq.)

- 86. Dr. Schmidt realleges the foregoing paragraphs 1 through 85 as if stated in full herein.
- 87. The unlawful retaliatory conduct engaged in by AIP and its employees, agents and/or representatives as set forth herein violated the rights of Dr. Schmidt under Title VII.
- 88. As a result of the unlawful retaliatory acts described herein, Dr. Schmidt suffered and continues to suffer harm, including but not limited to economic loss, humiliation, embarrassment, emotional distress and mental anguish.

VI. PRAYER FOR RELIEF

- 1. WHEREFORE, plaintiff respectfully requests this Court to grant him a judgment for his actual damages for the economic loss, humiliation, embarrassment, emotional distress and mental anguish caused by AIP's violations of the law alleged herein, together with punitive damages, pre- and post-judgment interest as provided by law, attorney's fees, costs and such other or further relief to which plaintiff shows himself justly entitled;
 - 2. Dr. Schmidt further prays that this Court order AIP to reinstate him.

VII. DEMAND FOR A JURY TRIAL

3. Dr. Schmidt demands a trial by jury on all issues so triable as of right.

Respectfully submitted,

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Dated: December 10, 2004 Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION FOR LEAVE TO FILE FIRST AMENDED AND CONSOLIDATED COMPLAINT, STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED AND CONSOLIDATED COMPLAINT and PLAINTIFF'S FIRST AMENDED AND CONSOLIDATED COMPLAINT was served by regular United States mail, postage prepaid, this 10th day of December, 2004, upon the following:

Teresa Burke Wright Jackson Lewis LLP 8614 Westwood Center Drive, Suite 950 Vienna, VA 22182

Chad Murchison

UNITED STATES DISTRICT COURT DISTRICT OF MARYLAND

Southern Division

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) Civil Action No.: 8:04-cv-3774 (AW)
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DEFENDANT'S ANSWER TO PLAINTIFF'S FIRST AMENDED AND CONSOLIDATED COMPLAINT

Defendant, by and through its undersigned counsel, hereby responds to the allegations in Plaintiff's First Amended and Consolidated Complaint ("Complaint") as follows:

AS TO: "I. NATURE OF ACTION"

- 1. Defendant denies the allegations contained in paragraph "1" of the Complaint, except denies knowledge or information sufficient to form a belief as to Schmidt's citizenship and race and admits only that Plaintiff purports to bring this action for breach of contract, detrimental reliance, breach of implied covenant of good faith and fair dealing, and violation of 42 U.S.C. §§1981 and 1983 and to seek damages, and that he is a former employee of AIP.
- 2. Defendant denies the allegations contained in paragraph "2" of the Complaint, except admits that Plaintiff purports to bring this action under Title VII of the Civil Rights Act of 1964 and to seek damages.

AS TO: "II. JURISDICTION AND VENUE"

- 3. Defendant denies the allegations contained in paragraph "3" of the Complaint, except admits that Plaintiff purports to invoke federal jurisdiction.
- 4. Defendant denies knowledge or information sufficient to form a belief as to the truth of falsity of the allegations contained in paragraph "4" of the <u>Complaint</u>, except admits that Plaintiff has attached to the <u>Complaint</u> a purported copy of a Notice of Suit Rights from the U.S. Equal Employment Opportunity Commission.
- 5. Defendant denies the allegations contained in paragraph "5" of the Complaint, except admits that the United States District Court for the District of Columbia transferred Plaintiff's common law and 42 U.S.C. §1983 claims to the United States District Court for the District of Maryland, and that the parties consented to the transfer of Plaintiff's claims under 42 U.S.C. §1981.

AS TO "III. PARTIES"

- 6. Defendant denies the allegations contained in paragraph "6" of the Complaint, except denies knowledge or information sufficient to form a belief as to Plaintiff's citizenship and race. Defendant admits only that Plaintiff commenced employment with AIP at its New York, NY location in or about March 1981, he moved to Washington, D.C. in October 1993 and that he worked at AIP's College Park, Maryland main offices from October 1993 to May 31, 2000.
 - 7. Defendant admits the allegations contained in paragraph 7.

AS TO: "IV. AIP MANAGEMENT"

- 8. Defendant denies the allegations contained in paragraph "8" of the Complaint, except admits that Dr. Marc H. Brodsky is AIP's Executive Director and CEO and that Dr. Brodsky is Dr. James H. Stith's direct supervisor
- 9. Defendant denies the allegations contained in paragraph "9" of the Complaint, except admits that Theresa Braun is AIP's Vice President Human Resources, and that she reports directly to Dr. Brodsky.
- 10. Defendant denies the allegations contained in paragraph "10" of the Complaint, except admits that Dr. Stith is AIP's Vice President, Physics Resources and that he reports directly to Dr. Brodsky.
- 11. Defendant denies the allegations contained in paragraph "11" of the Complaint, except admits that Randolph A. Nanna is Publisher of *Physics Today* and Mr. Nanna was hired in or around November 15, 1999 to replace Charles Harris, whom AIP discharged on or about March 2, 1999. Defendant admits that Mr. Nanna reports to Dr. Stith.
- 12. Defendant denies the allegations contained in paragraph "12" of the Complaint, except admits that Stephen G. Benka was Plaintiff's direct Supervisor from in or around September 1994 until Plaintiff's dismissal, that Dr. Benka is the Editor of *Physics Today* and that Dr. Benka currently reports to Mr. Nanna and formerly reported to Mr. Harris.

AS TO "V. ALLEGATIONS"

- 13. Defendant denies the allegations contained in paragraph "13" of the Complaint, except admits that Plaintiff was employed as an editor by AIP from March 17, 1981 to May 31, 2000.
- 14. Defendant denies the allegations contained in paragraph "14" of the Complaint.

- 15. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph "15" of the Complaint.
- 16. Defendant denies the allegations contained in paragraph "16" of the Complaint.
- 17. Defendant denies the allegations contained in paragraph "17" of the Complaint, except denies knowledge or information sufficient to form a belief with regard to Plaintiff's "efforts".
- 18. Defendant denies the allegations contained in paragraph "18" of the Complaint, except denies knowledge or information sufficient to form a belief as to any purported actions by Dr. Schmidt and Ms. Kumagai as to the *Physics Today* staff.
- 19. Defendant denies the allegations contained in paragraph "19" of the Complaint, except denies knowledge or information sufficient to form a belief as to whether Charles Harris may have "communicated" to Plaintiff and other staff members.
- 20. Defendant denies the allegations contained in paragraph "20" of the Complaint.
- 21. Defendant denies the allegations contained in paragraph "21" of the Complaint.
- 22. Defendant denies the allegations contained in paragraph "22" of the Complaint.
- 23. Defendant denies the allegations contained in paragraph "23" of the Complaint, except denies knowledge or information sufficient to form a belief as to what Mr. Harris may have "indicated" to Plaintiff a "few days" after the 1997 staff retreat.

- 24. Defendant denies the allegations contained in paragraph "24" of the Complaint, except admits that on or about October 1, 1997, a document was given to Plaintiff by Messrs. Harris and Benka.
- 25. Defendant denies the allegations contained in paragraph "25" of the Complaint, except denies knowledge or information sufficient to form a belief as to whether Plaintiff was "frustrated" or whether Plaintiff met with the *Physics Today* advisory committee.
- 26. Defendant denies the allegations contained in paragraph "26" of the Complaint.
- 27. Defendant denies the allegations contained in paragraph "27" of the Complaint, except admits that on or about November 5, 1997 Plaintiff gave to Dr. Brodsky a memorandum and that Dr. Brodsky "said he would investigate and get back to Dr. Schmidt".
- 28. Defendant denies the allegations contained in paragraph "28" of the Complaint.
- 29. Defendant denies the allegations contained in paragraph "29" of the Complaint.
- 30. Defendant denies the allegations contained in paragraph "30" of the Complaint, except admits that Dr. Brodsky contacted Plaintiff to reassure him that Dr. Brodsky's investigation into Plaintiff's alleged concerns was ongoing.
- 31. Defendant denies the allegations contained in paragraph "31" of the Complaint, except denies knowledge or information sufficient to form a belief as to what Mr. Harris may have said to Plaintiff.
- 32. Defendant denies the allegations contained in paragraph "32" of the Complaint.

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- 33. Defendant denies the allegations contained in paragraph "33" of the Complaint.
- 34. Defendant admits that Dr. Brodsky and Dr. Schmidt met on or about March 20, 1998, and denies all of the remaining allegations contained in paragraph "34" of the Complaint.
- 35. Defendant denies the allegations contained in paragraph "35" of the Complaint.
- 36. Defendant denies the allegations contained in paragraph "36" of the Complaint, except admits that Plaintiff sought review of his 1998 performance review by Ms. Braun and Dr. Stith and avers that the document Plaintiff submitted speaks for itself.
- 37. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph "37" of the Complaint.
- 38. Defendant denies the allegations contained in paragraph "38" of the Complaint.
- 39. Defendant denies the allegations contained in paragraph "39" of the Complaint.
- 40. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph "40" of the Complaint, except admits that AIP granted Plaintiff a leave from mid-December to mid-June 1999.
- 41. Defendant denies the allegations contained in paragraph "41" of the Complaint, except denies knowledge or information sufficient to form a belief as to whether *Physics Today* staff members discuss performance reviews with co-workers.

- 42. Defendant admits the allegations contained in paragraph "42" of the Complaint.
- 43. Defendant denies the allegations contained in paragraph "43" of the Complaint.
- 44. Defendant denies the allegations contained in paragraph "44" of the Complaint, except admits that Plaintiff received a performance review.
- 45. Defendant denies the allegations contained in paragraph "45" of the Complaint.
- 46. Defendant admits the allegations contained in paragraph "46" of the Complaint.
- 47. Defendant denies the allegations contained in paragraph "47" of the Complaint.
- 48. Defendant denies the allegations contained in paragraph "48" of the Complaint.
- 49. Defendant denies the allegations contained in paragraph "49" of the Complaint.
- 50. Defendant admits, upon information and belief, the allegations contained in paragraph "50" of the <u>Complaint</u>.
- 51. Defendant denies the allegations contained in paragraph "51" of the Complaint.
- 52. Defendant denies the allegations contained in paragraph "52" of the Complaint.

- 53. Defendant denies the allegations contained in paragraph "53" of the Complaint, except admits that Plaintiff's employment was terminated on May 31, 2000 and admits that Plaintiff wrote that he stole time from AIP.
- 54. Defendant denies the allegations contained in paragraph "54" of the Complaint.
- 55. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph "55" of the Complaint.
- 56. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph "56" of the Complaint.

AS TO "COUNT I

(Breach of Contract)"

- 57. Defendant repeats and realleges, by this reference, each and every admission, denial and other response as set forth above in reply to the allegations contained in paragraph "1" through "56", above, and denies each and every allegation not admitted unequivocally hereinabove.
- 58. Defendant denies the allegations contained in paragraph "58" of the Complaint.
- 59. Defendant denies the allegations contained in paragraph "59" of the Complaint, except admits that AIP employees are not penalized for expressing concerns about the workplace.
- 60. Defendant denies the allegations contained in paragraph "60" of the Complaint.
- 61. Defendant denies the allegations contained in paragraph "61" of the Complaint.

- 62. Defendant denies the allegations contained in paragraph "62" of the Complaint.
- 63. Defendant denies the allegations contained in paragraph "63" of the Complaint.
- 64. Defendant denies the allegations contained in paragraph "64" of the Complaint.

AS TO "COUNT II

(Detrimental Reliance)"

- 65. Defendant repeats and realleges, by this reference, each and every admission, denial and other response as set forth above in reply to the allegations contained in paragraph "1" through "64", above, and denies each and every allegation not admitted unequivocally hereinabove.
- 66. Defendant denies the allegations contained in paragraph "66" of the Complaint, except admits that AIP employees may speak freely about workplace concerns without jeopardizing their employment.
- 67. Defendant denies the allegations contained in paragraph "67" of the Complaint.
- 68. Defendant denies the allegations contained in paragraph "68" of the Complaint.
- 69. Defendant denies the allegations contained in paragraph "69" of the Complaint.

AS TO "COUNT III

(Breach of Implied Covenant of Good Faith and Fair Dealing)"

- 70. Defendant repeats and realleges, by this reference, each and every admission, denial and other response as set forth above in reply to the allegations contained in paragraph "1" through "69", above, and denies each and every allegation not admitted unequivocally hereinabove.
- 71. Defendant denies the allegations contained in paragraph "71" of the Complaint.
- 72. Defendant denies the allegations contained in paragraph "72" of the Complaint.
- 73. Defendant denies the allegations contained in paragraph "73" of the Complaint.

AS TO "COUNT IV

(42 U.S.C. §1981)"

- 74. Defendant repeats and realleges, by this reference, each and every admission, denial and other response as set forth above in reply to the allegations contained in paragraph "1" through "73", above, and denies each and every allegation not admitted unequivocally hereinabove.
- 75. Defendant denies the allegations contained in paragraph "75" of the Complaint.
- 76. Defendant denies the allegations contained in paragraph "76" of the Complaint.
- 77. Defendant denies the allegations contained in paragraph "77" of the Complaint.

AS TO "COUNT V

(42 U.S.C. §1983)"

- 78. Defendant repeats and realleges, by this reference, each and every admission, denial and other response as set forth above in reply to the allegations contained in paragraph "1" through "77", above, and denies each and every allegation not admitted unequivocally hereinabove.
- 79. Defendant denies the allegations contained in paragraph "79" of the Complaint.
- 80. Defendant denies the allegations contained in paragraph "80" of the Complaint.
- 81. Defendant denies the allegations contained in paragraph "81" of the Complaint.
- 82. Defendant denies the allegations contained in paragraph "82" of the Complaint.
- 83. Defendant denies the allegations contained in paragraph "83" of the Complaint.

- a. Defendant denies the allegations contained in paragraph "83" (a) of the Complaint.
- b. Defendant denies the allegations contained in paragraph "83" (b) of the Complaint.
- Defendant denies the allegations contained in paragraph "83" (c)
 of the <u>Complaint</u>.
- d. Defendant denies the allegations contained in paragraph "83" (d)
 of the Complaint.
- 84. Defendant denies the allegations contained in paragraph "84" of the Complaint.
- 85. Defendant denies the allegations contained in paragraph "85" of the Complaint.

AS TO "COUNT VI

(42 U.S.C. §2000e et seq.)"

- 86. Defendant repeats and realleges, by this reference, each and every admission, denial and other response as set forth above in reply to the allegations contained in paragraph "1" through "85", above, and denies each and every allegation not admitted unequivocally hereinabove.
- 87. Defendant denies the allegations contained in paragraph "87" of the Complaint.
- 88. Defendant denies the allegations contained in paragraph "88" of the Complaint.

AS TO: "VI. PRAYER FOR RELIEF"

89. Defendant denies the allegations contained in the "Prayer for Relief" clause and further denies that Plaintiff has pleaded a claim upon which relief could be granted and denies that he is entitled to any relief whatsoever.

AS TO: "VII. DEMAND FOR A JURY TRIAL"

90. Defendant admits that Plaintiff purports to demand a trial by jury.

Defendant explicitly denies that Plaintiff has stated a claim upon which relief can be granted and that he is entitled to a jury trial or to any relief whatsoever.

Without assuming the burden of proof as to any of the following defenses where the law does not impose such a burden on Defendant, Defendant asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

91. The Complaint should be dismissed, in whole or in part, because it fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

92. The Complaint should be dismissed because all actions undertaken by Defendant with respect to Plaintiff were undertaken for legitimate, non-discriminatory and non-retaliatory reasons.

THIRD AFFIRMATIVE DEFENSE

93. Plaintiff's claims should be dismissed to the extent that Plaintiff did not satisfy all jurisdictional prerequisites or conditions precedent to suit.

FOURTH AFFIRMATIVE DEFENSE

94. To the extent that Plaintiff failed to make good faith and diligent efforts to mitigate his purported damages and injuries, any relief awarded to Plaintiff should be denied or diminished, in whole or in part.

FIFTH AFFIRMATIVE DEFENSE

95. Plaintiff's claims should be dismissed to the extent that they are barred by applicable statutes of limitation and/or the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

96. In the event that it is concluded that a prohibited factor motivated any act alleged by Plaintiff against Defendant, the same acts would have been undertaken even absent said alleged discriminatory motive.

SEVENTH AFFIRMATIVE DEFENSE

97. To the extent that Plaintiff's claims are compensable, in whole or in part, under any State's Workers' Compensation Law, those claims are barred by the exclusive remedy provision contained in said Workers' Compensation Law.

EIGHTH AFFIRMATIVE DEFENSE

98. To the extent that Plaintiff engaged in acts of misconduct prior to or during employment which, if known by Defendant, would have resulted in termination of Plaintiff's employment, any relief awarded to Plaintiff should be reduced, in whole or in part.

NINTH AFFIRMATIVE DEFENSE

99. The Complaint is barred, in whole or in part, because (a) Defendant exercised reasonable care to investigate promptly any alleged discriminatory, retaliatory or harassing behavior, and (b) Plaintiff unreasonably failed to take advantage of any preventative or corrective opportunities provided by Defendant or to avoid harm otherwise.

TENTH AFFIRMATIVE DEFENSE

100. The <u>Complaint</u> should be dismissed because Defendant did not enter into an oral or written agreement containing terms alleged in the <u>Complaint</u>, and, because neither any alleged agreement nor any note or memorandum thereof was made in writing and subscribed to by Defendant, Plaintiff's claims are barred by the Statute of Frauds.

ELEVENTH AFFIRMATIVE DEFENSE

101. Defendant has fully performed all obligations under any agreement, written or oral, with Plaintiff.

TWELFTH AFFIRMATIVE DEFENSE

102. To the extent that Plaintiff's <u>Complaint</u> is based on an alleged breach of contract, Plaintiff cannot recover legal fees, punitive damages or compensatory damages with regard thereto.

THIRTEENTH AFFIRMATIVE DEFENSE

103. Plaintiff's causes of action alleging violation of 42 U.S.C. §1983 or "due process" should be dismissed for failure to state a claim upon which relief can be granted because Defendant is not an entity that acted under color of state law with respect to Plaintiff.

FOURTEENTH AFFIRMATIVE DEFENSE

104. Plaintiff was, at all times, an at-will employee, having no contractual or quasi-contractual entitlement and, as such, all contract and other claims should be dismissed.

FIFTEENTH AFFIRMATIVE DEFENSE

105. At all times relevant hereto, Defendant acted in good faith toward Plaintiff and did not violate any rights which may be secured to Plaintiff under federal, state or local laws, rules, regulations or guidelines.

SIXTEENTH AFFIRMATIVE DEFENSE

106. The <u>Complaint</u> must be dismissed because of Plaintiff's intentional or other misconduct or the doctrine of laches.

Dated: February 25, 2004

JACKSON LEWIS LLP

/s/ Teresa Burke Wright

Wendy J. Mellk¹
Teresa Burke Wright
(MD Federal Bar No. 08602)
8614 Westwood Center Drive
Suite 950
Vienna, Virginia 22182
Telephone: 703-821-2189

Facsimile:

703-821-2267

Application for pro hac vice admission granted on November 19, 2004 in case number 8:04-cv-03270-AW, which was consolidated with this case on January 11, 2005.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	PERSON FILING CHARGE				
EGUAL EINIPLOT MENT OPPORTUNITY COMMINISSION	Schmidt, Jeff				
	THIS PERSON (check one)				
	X CLAIMS TO BE AGGRIEVED				
	IS FILING ON BEHALF OF ANOTHER				
Ms. Thersa Braun	DATE OF ALLEGED VIOLATION Earliest Most Recent				
Human Resource					
American Institute Of Physics One Physics Ellipse	01/28/1998 05/31/2000 PLACE OF ALLEGED VIOLATION				
College Park, MD 20740	College Park, MD				
OUTREE Tark, IND 20110	EEOC CHARGE NUMBER				
	12HA10020				
	FEPA CHARGE NUMBER				
	RF00-1135				
NOTICE OF CHARGE OF DISCRIMINATION IN JURISDICTIONS OF A Secretage of the Company	WHERE A FEP AGENCY WILL INITIALLY PROCESS				
YOU ARE HEREBY NOTIFIED THAT A CHARGE OF EMPLOYMENT DISCRIMINATION	N UNDER				
🗓 Title VII of the Civil Rights Act of 1964	ļ				
☐ The Age Discrimination in Employment Act of 1967 (ADEA) ☐ The Americans with Disabilities Act					
HAS BEEN RECEIVED BY					
☐ The EEOC and sent for initial processing to	OC and sent for initial processing to (FEP Agency)				
X The Prince George's County, H.R.C. and sent to					
(FEP Agency)					
While EEOC has jurisdiction (upon the expiration of any deferral requirement if this is a Title VII or ADA charge) to investigate this charge, EEOC may refrain from beginning an investigation and await the issuance of the Agency's final findings and orders. These final findings and orders will be given weight by EEOC in making its own determination as to whether or not reasonable cause exists to believe that the allegations made in the charge are true.					
You are therefore encouraged to cooperate fully with the Agency. All facts and evidence provided by you to the Agency in the course of its proceedings will be considered by the Commission when it reviews the Agency's final findings and orders. In many instances the Commission will take no further action, thereby avoiding the necessity of an investigation by both the Agency and the Commission. This likelihood is increased by your active cooperation with the Agency.					
As a party to the charge, you may request that EECC review the final decision and order of the above named Agency. For such a request to be honored, you must notify the Commission in writing within 15 days of your receipt of the Agency's final decision and order. If the Agency terminates its proceedings without issuing a final finding and order, you will be contacted further by the Commission. Regardless of whether the Agency or the Commission processes the charge, the Recordkeeping and Non-Retaliation provisions of Title VII and the ADEA as explained in the "EECC Rules and Regulations" apply.					
For further correspondence on this matter, please use the charge number(s) shown.					
An Equal Pay Act investigation (29 U.S.C. 206(d)) will be conducted by the Commission concurrently with the Agency's investigation of the charge.					
IX Enclosure: Copy of Charge					
BASIS OF DISCRIMINATION					
RACE COLOR SEX RELIGION NAT. ORIGIN AGE	DISABILITY X RETALIATION COTHER				
CIRCUNSTANCES OF ALLEGED VIOLATION					
See enclosed Form 5, Charge of Discrimination.	-				
	S 000641				
l					
TE TYPED NAME/TITLE OF AUTHORIZED EEOC OFFICIAL	SIGNATURE				
James L. Lee, Director					
EEOC FORM 131 A (Rev. 06/92)					

SEN	F &Y: OFFICE	DEPOT;	2023635824;	JAN-29-	01 3:53PM;	PAGE 5/5
	7		RGE OF DISCRIMINAT	ION	AGENCY	CHARGE NUMBER
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	<u>Pr</u>	ince George	's County, H.R.C. State or local Agency, i	if any	a:	nd EEOC
	NAME (Indicate	Mr., Ms., Mrs.)		•	HOME TELEP	HONE (Include Area Code)
	Mr. Jeff		ATTU STATE AND	770 0005	(2.02) 537-3645 DATE OF BIRTH
. Y. 75 a	STREET ADDRESS		CITY, STATE AND	7 ZIP CODE		DATE OF BININ
•	NAMED IS TO	HE EMPLOYER, OCAL GOVERNME	LABOR ORGANIZATION, E NT AGENCY WHO DISCRIM	INATED AGAINST N	ME (II more th	an one list below.)
	NAME			MBER OF ENPLOYEES, M		EPHONE (Include Area Code)
or r	American STREET ADDRESS	Institute (Of Physics Ca city, state and	at D (501 +) D ZIP CODE	1. (301) 209-3100 county
		ics Ellipse	, College Park, MD	20740	F	033
	NAME	÷			TELEPHONE N	UMBER (Include Area Code)
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	X RETAL	IATION AGE	DISABILITY DOTHE	R (Spec1fy)	01/28/1	998 05/31/2000 NUING ACTION
	THE PARTICULAR	S ARE (II additio	nal space is needed, attach extr	a sheet(s)):		
	I believe that the Respondent has retaliated against me when I was involuntarily discharged on May 31, 2000.					n I
	On August 17, 1999, I complained to my Supervisors that the Respondent was not hiring employees (Black) in professional positions. I also complained that the Respondent was not promoting and following their Affirmative Action Program to hire Black employees in professional positions.					
	On August 17, 1999, I was given a negative Performance Review, after I complained.					
	In addition, on May 31, 2000, I was discharged for writing a book on company time, which is not true.					
	I believe that I was treated in this manner in retaliation for my complaints of disparate treatment of employees (Black) not being hired in professional positions.					
	Furthermore, from January 28, 1998 to May 31, 2000, the Respondent banned any private conservations between myself and Co-Workers (White) because they thought that I was organizing to bring about changes in their policies, including their discriminatory hiring policies.					
			oth the EEOC and the State or	NOTARY - (When necess	ary for State a	and Local Requirements)
	address or tele	phone number and co	operate fully with them in the			e above charge and that e, information and belief.
			that the foregoing is true	SIGNATURE OF COMP		•
, ~	Data 21 Nov.	J	Solmith	SUBSCRIBED AND S	WORN TO BE	FORE ME THIS DATE
	Late Ito	Chargi	ng Party (Signature)	L		

JACKSON LEWIS SCHNITZLER & KRUPMAN

1000 Woodbury Road · Suite 402 · Woodbury, New York 11797 (516) 364-0404

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SEATTLE, WA
STAMFORD, CT
WASHINGTON, DC
WHITE PLAINS, NY

February 2, 2001

Mr. William Welch
Executive Director
The Prince George's County Government
Human Relations Commission
1400 McCormick Drive
Largo, Maryland 20744

Re: Jeff Schmidt v. American Institute of Physics Charge No. RF00-1135

Dear Mr. Welch:

As counsel for American Institute of Physics ("AIP" or "Respondent"), we are responding to the allegations contained in Jeff Schmidt's ("Charging Party") administrative charge of retaliation. In his spurious and factually inaccurate charge, Charging Party, a former senior associate editor at *Physics Today* ("PT"), a magazine published by AIP, alleges that Respondent retaliated against him long after he complained about PT's hiring process by giving him a poor performance review in 1999, and terminating his employment in May, 2000. Charging Party's allegations are factually inaccurate, spurious and meritless. For the reasons set forth herein, his charge of retaliation should be dismissed for lack of probable cause.

There is no evidence of retaliation. Contrary to Charging Party's allegations, Respondent did not take any adverse action because Mr. Schmidt criticized PT's hiring process in 1997. For several years prior to his discharge, Charging Party consistently was counseled because he failed or refused to meet Respondent's productivity standards. In late May 2000, Respondent learned that Charging Party recently published a book announcing that it was written on "stolen time." In the book's Introduction section, Charging Party unequivocally admitted to writing it during work hours. See Exhibit A. In pertinent part, Charging Party himself wrote, in the Introduction to his book that:

D01532

"This book is stolen"



February 2, 2001 Page 2

- "Written in part on stolen time..."
- "So I began spending some office time on my own work...."

After Charging Party admittedly used Respondent's time to write the book, rather than striving to meet Respondent's productivity standards, his employment was terminated.

I. <u>BACKGROUND</u>

A. American Institute of Physics

The American Institute of Physics is a not-for-profit membership corporation, chartered in 1931, for the purpose of promoting the advancement of the knowledge of physics. Its members are comprised of leading societies in the fields of physics and related sciences. AIP publishes scientific journals, including the magazine *Physics Today*. AIP is an equal opportunity employer that maintains a bona fide affirmative action plan that has been approved repeatedly during governmental audits. See Exhibit B.

1. Physics Today

Physics Today ("PT") is a scientific magazine which solicits feature articles from experts in the field of physics. After an article is drafted, the draft is critically reviewed by PT's editorial staff. Thereafter, the article is sent to an outside expert for peer review. After peer review is completed, a PT staff editor develops a strategy for the author to make revisions. After the author revises the article, the article, which now is in its "ready to edit" stage, is returned to PT for editing by a staff editor.

B. Overview of Charging Party's Employment With Respondent

Charging Party worked for PT as an Associate Editor, then as a Senior Associate Editor. Stephen Benka, PT's Editor, was Charging Party's direct supervisor from in or around September 1994 until Charging Party's discharge. As an Associate Editor/Senior Associate Editor, Charging Party was responsible for editing a specified number of feature articles per year ("productivity goals"). His responsibilities included working on both "ready to edit" articles and those which are not yet in the "ready to edit" stage.

In 1997, over two and one half years prior to his discharge (<u>not</u> in August 1999 as Charging Party now claims), Charging Party raised concerns about Respondent's alleged failure to make efforts to recruit minority professionals for a particular PT associate editor position. Respondent, including Marc Brodsky (AIP's Executive Director/CEO), investigated Charging Party's concerns and found them to be baseless. Mr. Brodsky met with Charging Party several times,

February 2, 2001 Page 3

in 1998, to relay the findings of his investigation, and to reiterate Respondent's commitment to diversity and equal employment opportunity.

II. <u>CHARGING PARTY'S EMPLOYMENT WAS TERMINATED FOR LEGITIMATE</u>, <u>BUSINESS REASONS</u>

Charging Party claims that he was given a negative performance evaluation on August 17, 1999, and that he was discharged in May 2000, because of his alleged August 17, 1999 complaint that Respondent was not "following their Affirmative Action Program to hire Black employees in professional positions." This claim is baseless and misrepresents when Charging Party raised this issue. Charging Party's criticism (which was stated in 1997) did not factor into Respondent's decision to discharge Mr. Schmidt. Rather, for several years prior to his discharge, Charging Party failed or refused to meet productivity goals. He also was resistant, at times, to assuming responsibility for articles prior to the "ready to edit" stage. Accordingly, when Respondent learned, in late May 2000, that Charging Party admitted to using work time to write a non-work related book, rather than using Respondent's time to achieve his productivity goals, his employment was terminated.

A. Charging Party Had A Long History Of Failing To Meet Respondent's Expectations

1. Charging Party Failed To Meet His Productivity Goals In 1995 and 1997

On or about February 15, 1995, Charging Party acknowledged receipt of his performance evaluation covering February 1994 through January 1995. See Exhibit C. The evaluation, which was completed by Mr. Benka, gave Charging Party an overall rating of "3" (out of a possible "5"). This mediocre rating was due, in part, to the fact that Charging Party had not achieved his quota of editing sixteen articles during the review period. The performance evaluation specifically criticized Charging Party's substandard productivity in his principal function of editing feature articles. Id. at p.2. The evaluation also reflects that Charging Party explicitly was told that he "must aim to edit a minimum of 16 articles published April 1995 to March 1996 [the next review period]." See Exhibit C at p.2. Charging Party signed this review without protest.

It was noted that "His productivity on his main function of editing feature articles is below capacity." Id.

February 2, 2001 Page 4

Despite this counseling, Charging Party <u>again</u> failed to meet his productivity goals for the review period ending in March 1997 (February 1996 through January 1997). See Exhibit D. Charging Party only edited 15 articles — not the minimum of 16 articles that were expected of him. At the time of his performance review, Charging Party was instructed that, like his coworkers, he was required to edit 18 articles during the next review period. Charging Party failed to do so.

2. <u>Charging Party Failed to Meet His Productivity Goals During The 1997</u> Review Period

In mid 1997, Charging Party requested an extended leave of absence for the birth of his daughter. Respondent agreed to that request. To ensure that Charging Party would be able to meet his annual productivity goal, Mr. Benka reduced the number of articles Charging Party was expected to edit from 18 to 15. Charging Party ultimately decided not to take a leave of absence between 1997 and 1998. Since Charging Party did not take an extended leave time, Respondent expected that Charging Party meet his original goal of editing 18 articles. Charging Party did not do so. Rather, during the 1997 review period (March 1997 through February 1998) and in direct contravention of his previous review and counseling, Charging Party edited only 15 articles. See Exhibit E. His work also was flawed, as noted in the review. Id.

Based, in part, on his lack of productivity, Charging Party received an overall "3" rating on his performance evaluation. <u>Id</u>. At the time Charging Party received this performance evaluation, Mr. Benka specifically informed Charging Party that he was expected to edit 18 articles for publication before his next review. <u>See Exhibit E. Charging Party attempted to justify his failure to meet his productivity goals on the grounds that the goal (<u>i.e.</u>, editing 18 articles per year) was unattainable and unfair.</u>

² Charging Party did meet his productivity goal in the 1995-96 review period.

At this time, similarly situated PT staff editors were required to edit 18 articles (or the equivalent thereof) per year.

Charging Party appealed this performance evaluation to Theresa Braun, Respondent's Director of Human Resources, and Jim Stith, Respondent's Director of Physics Programs. After investigating Charging Party's concerns, Dr. Stith who is African-American, found no sufficient reason to justify any change to the performance evaluation.

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3. <u>Charging Party Was Resistant To Assuming Responsibility For Pre-</u> "Ready to Edit" Articles

Throughout his employment, Charging Party, at times, was resistant to accepting more responsibility for pre- "ready to edit" articles. Since at least 1996, Mr. Benka repeatedly had requested that Charging Party take more responsibility for pre- "ready to edit" articles. Although taking responsibility for pre- "ready to edit" articles was one of Charging Party's job duties, Charging Party, at times, was resistant to doing so.⁵

4. Charging Party Again Failed To Meet His Productivity Goal For The 1998-1999 Review Period

Throughout 1998, Mr. Benka repeatedly reminded Charging Party that he was required to edit 18 articles. Charging Party was reminded of this obligation in October 1998, when he requested a six-month sabbatical. See Exhibit G. Mr. Benka again reminded Charging Party of his responsibility to meet his productivity goals when he returned from sabbatical in June 1999.

Despite Respondent's explicit admonishments, Charging Party, once again, failed to meet Respondent's performance expectations. Instead of editing 18 articles over a twelve-month period, Charging Party edited only 13.5 articles-well below Respondent's well enunciated standards. See Exhibit H. Based upon his deficient productivity, in addition to other performance

At or around the time Charging Party declined to take a paternity leave, Charging Party asked Mr. Benka for work. However, Charging Party requested that Mr. Benka assign only articles that were in the "ready to edit" stage. In response, Mr. Benka reminded Charging Party that a) earlier in the year, he had sought to assign Charging Party several "ready to edit" articles; b) Charging Party had declined to take any new articles so the "ready to edit" articles were assigned to other editors; and, c) there were plenty of articles in the pre- "ready to edit" stage upon which Charging Party could work. See Exhibit F. Charging Party declined to accept any of the not yet "ready to edit" articles.

Charging Party's sabbatical ran from mid-December 1998 through mid-June 1999. As a result of his absence, Charging Party's performance evaluation was postponed from March 1999 until August 1999. This ensured that the performance evaluation reviewed Charging Party's work for a twelve-month period — <u>i.e.</u>, March through November 1998 (nine months) and June through August 1999 (three months).

Charging Party protested Respondent's calculation that he only edited 13.5 articles during the review period. He claimed that a) the work he did on PT's 50th anniversary issue should have counted as two articles; and, b) two articles counted towards his 1997 performance goal (continued...)

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issues⁸, Charging Party initially received an overall rating of 2.8 on his August 17, 1999 performance evaluation. <u>Id</u>. After Charging Party protested the rating (without asserting that the rating was retaliatory), Mr. Benka increased the rating to an overall "3." (Charging Party's memorandum regarding this review and his supervisor's reply are incorporated as part of Exhibit H.)

Without protest, Charging Party had received an overall rating of "3" on a prior performance evaluation. See Exhibit C. Charging Party does not claim that the prior evaluation was retaliatory. This certainly rebuts his claim that the same rating he received on his August 1999 evaluation was retaliatory.

B. Respondent Terminated Charging Party's Employment on May 31, 2000, After Learning That Charging Party Admittedly Wrote A Book On Paid Work Time — Rather Than Working Towards Achieving His Performance Goals

In or around May 2000, Charging Party published a non-work related book. He never sought approval to write the book on work time or advised AIP that he was doing so. In the book's introductory section, Charging Party admitted to writing the book on his employer's time. He explicitly states that "This book is stolen. Written in part on stolen time." See Exhibit A. Charging Party's admission seriously concerned Respondent because, inter alia, of Charging Party's long standing productivity problems and his resistance, at times, to assuming more responsibility for pre-"ready to edit" work. Charging Party's admission, in the book's introduction, created a strong inference that the reason Mr. Schmidt was unable or unwilling to do his work was because he was engaging in personal, non-PT related activities during work time, i.e., working on his book.

Charging Party's 1997 complaint that PT's hiring process unfairly excluded minorities was not a factor in this decision. Indeed, Dr. Jim Stith (Respondent's Director of Physics Programs), who is African-American, was involved in the decision to discharge Charging Party. Moreover, by announcing to all that he had "stolen" work time for this personal pursuit, Charging Party placed AIP in an untenable position.

⁷(...continued)

also should be counted in 1998. Respondent explained to him that his work on the anniversary issue was not counted towards his productivity goal because he had been removed from working on PT's anniversary issue due to his failure to produce the appropriate material.

Charging Party's performance evaluation noted other deficiencies in his performance, including his failure to make an appropriate contribution to PT's anniversary issue.

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In the event that Charging Party asserts that he was lying about having written the book on Respondent's time, he would lack credibility as an editor (whose integrity must be unquestioned). Further, by proclaiming publicly that he had "stolen work time," he forced AIP to address its employee's malfeasance. An employer unquestionably can consider its image in deciding whether to discharge a worker who brazenly announces his theft of work time.

III. CHARGING PARTY CANNOT ESTABLISH THAT RESPONDENT TERMINATED HIS EMPLOYMENT IN RETALIATION FOR HIS EXPRESSION OF CONCERN ABOUT THE HIRING OF AFRICAN-AMERICAN EDITORS

Charging Party's claim that Respondent retaliated against him because he raised concerns about PT's hiring process with respect to African-American editors is spurious and baseless. Charging Party also appears to claim that Respondent retaliated against him by banning private conversations with his co-workers. Respondent never did so. Even if it did, avoiding disruption at work or preventing the use of work time for non-work activities does not constitute retaliation.

To establish a claim of retaliatory discharge, Charging Party must establish 1) that he engaged in protected activity; 2) adverse action was taken against him, and, 3) a causal connection exists between the protected activity and discharge. See, e.g., Ross v. Communications Satellite Corp., 759 F.2d 355, 365 (4th Cir. 1985). Charging Party cannot establish any causal connection between his complaints and his performance evaluation rating in August 1999 or the May 2000 discharge. Over two and one-half years passed between Charging Party's discussions with Marc Brodsky about PT's hiring process and Charging Party's discharge. During these two and one-half years, Respondent afforded Charging Party favorable treatment. It allowed him to take a six-month sabbatical in 1998-1999. Respondent also consented to his request to change his employment status from full-time to part-time.

A. Charging Party's Raised Concerns About PT's Hiring Process For African-American Editors In 1997, Not In August 1999

In or around October 1997, Charging Party expressed his opinion that PT did not make sufficient effort to hire a minority for an open editor position in June 1997, and, thus, was not complying with its affirmative action plan. Marc Brodsky investigated Charging Party's concerns. He found that PT had made significant efforts to recruit minority candidates for the associate editor position (a position which required a Ph.D. in physics). However, the number of minorities holding

Respondent maintains an Affirmative Action Plan in compliance with Executive Order 11246. Significantly, Respondent has been awarded "letters of compliance" following audits conducted by Office of Federal Contract Compliance Programs. See Exhibit I.

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a Ph.D. in physics is extremely limited. Indeed, during the twenty-five year period between 1973 and 1998, out of the 25,000 Ph.Ds conferred in physics, only 226 African-Americans, and 389 Hispanics, earned a Ph.D. in physics. See Exhibit J.

Mr. Brodsky also reviewed PT's actual hiring process. He found that a) PT's editorial staff, including Charging Party, participated in reviewing and ranking applicants' resumes based on their qualifications; b) after ranking the applicants, the top five were given an editing test; c) PT's editorial staff reviewed the tests, but were not made aware of which test belonged to any particular candidate; ¹⁰ and, d) of the five candidates, the most qualified was chosen.

After reviewing the hiring process, Mr. Brodsky met with Charging Party, in or around March 1998, to respond to his concerns. Mr. Brodsky assured Charging Party that PT's hiring process for editor positions was fair and did not unfairly affect any candidate. He also reiterated Respondent's commitment to diversity, to its Affirmative Action Plan and to equal opportunity employment.

Respondent is unaware of any complaint made by Charging Party about diversity, PT's hiring or recruitment process or Respondent's Affirmative Action plan after the 1998 discussion between Charging Party and Mr. Brodsky. Charging Party did not complain about PT's hiring processes or implementation of its Affirmative Action plan in August 1999. Accordingly, the fact that over two years passed between Charging Party's complaint and his discharge negates any inference that his employment was terminated because of any expression of concern.

B. Charging Party Was Afforded Favorable Treatment After He Raised Concerns About PT's Hiring Process

Also rebutting any inference of retaliatory animus is the fact that Respondent treated Charging Party favorably between his October 1997 complaint and his discharge. Respondent accommodated Charging Party's request for a six-month sabbatical. No other PT staff member has ever been granted a similar privilege. Further, in or around August 1999, Respondent allowed Charging Party to change his employment status from full-time to part-time. These intervening positive employment actions, between Charging Party's allegedly protected activity (complaints in October 1997) and the alleged retaliatory behavior in 1999 and 2000, are inconsistent with a finding of retaliatory animus.

Significantly, Charging Party chose not to participate in the blind review of these tests.

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IV. CHARGING PARTY'S UNSUBSTANTIATED "BELIEF" THAT HE WAS RETALIATED AGAINST BECAUSE HE EXPRESSED CONCERN ABOUT THE HIRING OF AFRICAN-AMERICAN EDITORS DOES NOT, AS A MATTER OF LAW, STATE A CLAIM

Charging Party expresses his self-serving perception that "I believe I was treated in this manner in retaliation for my complaints of disparate treatment of employees (Black) not being hired in professional positions." This allegation is insufficient, as a matter of law, to support a claim of discrimination. There is no direct or objective evidence of retaliatory animus. Charging Party offers no evidence that he was subjected to any derogatory comments about his complaints. There is no evidence that Charging Party's discussion with Dr. Brodsky was raised or addressed again at any time. Respondent, which is committed to equal opportunity employment, promptly investigated Charging Party's concern. Further, as set forth above, he was treated favorably after raising concerns about PT's hiring process.

Charging Party's baseless, subjective speculations, without more, are insufficient to establish that any of Respondent's actions occurred under circumstances giving rise to an inference of retaliation. Indeed, "[i]t is more than well-settled that an employee's subjective belief that he suffered an adverse employment action as a result of [retaliation], is not enough [to support a claim of retaliation]." Douglas v. United Service Auto Ass'n, 79 F.3d 1415 (5th Cir. 1996). "[W]hile [Charging Party is] understandably unhappy that he was terminated, his subjective beliefs that he was [retaliated] against are insufficient to support his [retaliation] claims." Coleman v. Prudential Relocation, 1997 WL 533509 *15 (W.D.N.Y. 1997) (terminated employees failed to establish discrimination where they offered no specific evidence to support their subjective belief that they were terminated because of their age); Rodriguez v. International Business Machines, 960 F. Supp. 227 (N.D.Cal 1997) ("[Charging Party's] subjective belief that [Respondent's] actions were discriminatorily motivated simply is not sufficient to withstand summary judgment").

V. RESPONSE TO THE COMMISSION'S REQUEST FOR INFORMATION

- 1. American Institute of Physics, One Physics Ellipse, College Park, Md., 20740.
- 2. <u>See Sections I through IV, above.</u>
- 3. See, inter alia, Exhibit B.
- 4. See Exhibits B and K.
- 5. Stephen Benka, Editor of PT, was Charging Party's direct supervisor. <u>See</u> Section I(B), above. Mr. Benka's address is American Institute of Physics, One Physics Ellipse, College Park, Md., 20740. He can be contacted solely through counsel.

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- 6. Elliot Plotkin, One Physics Ellipse, College Park, MD, 20740, 301-209-3049, Art & Production Director; Bertram Schwarzschild, One Physics Ellipse, College Park, MD, 20740, 301-209-3053, Sr. Associate Editor; Warren Kornberg, One Physics Ellipse, College Park, MD, 20740, 301-209-3038, Associate Editor I; Gloria Lubkin, One Physics Ellipse, College Park, MD, 20740, 301-209-3050, Editor At Large; Judith Barker, One Physics Ellipse, College Park, MD, 20740, 301-209-3046, Senior Assistant Editor, Charles Day, One Physics Ellipse, College Park, MD, 20740, 301-209-3036, Senior Associate Editor; Barbara Levi, One Physics Ellipse, College Park, MD, 20740, 805-965-3483, Senior Editor; Tonya Gary, One Physics Ellipse, College Park, MD, 20740, 301-209-3042, Administrative Secretary; Toni Feder, One Physics Ellipse, College Park, MD, 20740, 919-688-6257, Associate Editor I; Donald Price, One Physics Ellipse, College Park, MD, 20740, Assistant Art Editor; Richard Fitzgerald, One Physics Ellipse, College Park, MD, 20740, 301-209-3052, Associate Editor II; Peter Pulsifer, One Physics Ellipse, College Park, MD, 20740, 301-209-3072, Articles Editor; Marian Smith, One Physics Ellipse, College Park, MD, 20740, 301-209-3016, Senior Secretary; Martha Hanna, One Physics Ellipse, College Park, MD, 20740, 301-209-3041; Laurel Rumpl, One Physics Ellipse, College Park, MD, 20740, 301-209-3361, Copy Editor; Lynley Hargreaves, One Physics Ellipse, College Park, MD, 20740, 301-209-3362, Assistant Online; James Dawson, One Physics Ellipse, College Park, MD, 20740, 202-662-8710, Senior News Editor. These individuals can be contacted solely though counsel.
- 7. See Sections I through IV, above, and Exhibits hereto.
- 8. Complainant's own admission that he "stole" work time is set forth in his book, and was verified by his failure to deny he did so at the pre-discharge meeting. See Sections I through IV, above.
- 9. Stephen Benka, Marc Brodsky, Jim Stith, Randolph Nanna (PT's Publisher) and Theresa Braun (Respondent's Director of Human Resources) are aware of the reasons why Charging Party's employment was terminated and can support that decision.
- 10. Respondent is unaware of any other PT employee who was similarly situated to Charging Party, i.e., who had a history of productivity problems and who engaged in the same conduct as Charging Party.
- 11. Attached hereto, as Exhibit L, is the text of Respondent's 2000 Affirmative Action Program. The remainder of the plan is confidential and is not subject to disclosure.
- 12. See Exhibit M.

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- 13. Since Complainant does not claim that he was denied a promotion, this inquiry is neither relevant nor material.
- 14. Respondent maintains a "Conflict of Interest" policy, which specifically provides that "all employees have a primary responsibility to the American Institute of Physics and are expected to avoid any activity which may interfere, or have the appearance of interfering with the performance of his or her job responsibilities." See Exhibit K.
- 15. <u>See</u> response to Request No. 10, above.
- 16. Respondent never has "banned" private conversations between its employees.
- 17. There is no such policy. <u>See</u> response to Request No. 16, above.
- 18. N/A.

Discharge:

- 1.(a)-(f) See Sections I through IV, above.
- 2. See Exhibits K and N.
- 3. The basic written rules of conduct are set forth in Respondent's Employee Handbook which is attached hereto as Exhibit N.
- 4. <u>See Response to Request No. 10, above.</u>
- 5. Charging Party was only the PT Editor discharged during the relevant time period.

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VI. CONCLUSION

Charging Party's allegation of retaliation is without merit. Consequently, Respondent respectfully submits that Charging Party's charge should be dismissed for lack of probable cause.

Very truly yours,

JACKSON, LEWIS, SCHNITZLER & KRURMAN

Wendy J. Melik

WJM:dc/lg/dc Enclosures

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Introduction

This book is stolen. Written in part on stolen time, that is, I felt I had no choice but to do it that way. Like millions of others who work for a living, I was giving most of my prime time to my employer. My job simply didn't leave me enough energy for a major project of my own, and no one was about to hire me to pursue my own vision, especially given my irreverent attitude toward employers. I was working in New York City as an editor at a glossy science magazine, but my job, like most professional jobs, was not intellectually challenging and allowed only the most constrained creativity. I knew that if I were not contending with real intellectual challenges and exercising real creativity—and if I were not doing anything to shape the world according to my own ideals—life would be unsatisfying, not to mention stressful and unexciting. The thought of just accepting my situation seemed insane. So I began spending some office time on my own work, dumped my TV to reappropriate some of my time at home, and wrote this book. Not coincidentally, it is about professionals, their role in society, and the hidden battle over personal identity that rages in professional education and employment.

The predicament I was in will sound painfully familiar to many professionals. Indeed, generally speaking, professionals today are not happy campers. After years of worshiping work, many seemingly successful professionals are disheartened and burned out, not because of their 70-hour workweeks, but because their salaries are all they have to show for their life-consuming efforts. They long for psychic rewards, but their employers' emphasis on control and the bottom line is giving them only increased workloads, closer scrutiny by management and unprecedented anxiety about job security. In this way the cold reality of employer priorities has led to personal crises for many of this country's 20 million professionals.

Burned-out professionals may not be immediately obvious to the casual observer, because typically they stay on the job and maintain their usual high level of output. But they feel like they are just going through the motions. They have less genuine curiosity about their work, feel less motivated to do it and get less pleasure from it. The emotional numbness inevitably spreads from their work lives into their personal lives. According to Herbert J. Freudenberger, the New York psychologist who coined the term burnout in the mid-1970s, the personal consequences are wide-ranging and profound: cynicism, disconnection, loss of vitality and authenticity, decreased enjoyment of family life, anger, strained relationship with spouse or partner, divorce, obsessive behavior such as "workaholism," chronic fatigue, poor eating habits, neglect of friends, social isolation, loneliness—and the list of symptoms goes on. Freudenberger tells me he has seen a big increase in career burnout among professionals in the past twenty years. Ironically, such depression is most likely to hit the most devoted professionals—those who have been the most deeply involved in their work. You can't burn out if you've never been on fire. D01546

The problem shows no sign of easing. In fact, the ranks of troubled professionals are swelling as members of Generation X finish school and rack up a few years in the workforce. Many Xers, having observed the unfulfilling work ethic of their baby boom predecessors, want their own working lives to be fun and meaningful from the get-go. Starting out with priorities that took boomers a decade to figure out, but in no better position to act on those priorities, Xers are simply having career crises at an earlier age. Clearly, there is an urgent need to understand why career work so often fails to fulfill its promise.

I argue that the hidden root of much career dissatisfaction is the professional's lack of control over the "political" component of his or her creative work. Explaining this component is a major focus of this book. Today's disillusioned professionals entered their fields expecting to do work that would "make a difference" in the world and add meaning to their lives. In this book I show that, in fact, professional education and employment push people to accept a role in which they do not make a significant difference, a politically subordinate role. I describe how the intellectual boot camp known as graduate or professional school, with its cold-blooded expulsions and creeping indoctrination, systematically grinds down the student's spirit and ultimately produces obedient thinkers—highly educated employees who do their assigned work without questioning its goals. I call upon students and professionals to engage in just such questioning, not only for their own happiness, but for society's sake as well.

This book shows that professional education is a battle for the very identity of the individual, as is professional employment. It shows how students and working professionals face intense pressure to compromise their ideals and sideline their commitment to work for a better world. And it explores what individuals can do to resist this pressure, hold on to their values and pursue their social visions. People usually don't think of school and work in terms of such a high-stakes struggle. But if they did, they would be able to explain why so many professional training programs seem more abusive than enlightening, and why so many jobs seem more frustrating than fulfilling.

I decided to write this book when I was in graduate school myself, getting a PhD in physics, and was upset to see many of the best people dropping out or being kicked out. Simply put, those students most concerned about others were the most likely to disappear, whereas their self-centered, narrowly focused peers were set for success. The most friendly, sympathetic and loyal individuals, those who stubbornly continued to value human contact, were handicapped in the competition. They were at a disadvantage not only because their attention was divided, but also because their beliefs about big-picture issues such as justice and social impact caused them to stop, think and question. Their hesitation and contemplation slowed them down, tempered their enthusiasm and drew attention to their deviant priorities, putting them at a disadvantage relative to their unquestioning, gung-ho classmates. Employers, too, I realized, favored people who kept their concerns about the big picture nicely under control, always in a

position of secondary importance relative to the assigned work at hand. Thus I saw education and employment as a self-consistent, but deeply flawed, system. I wrote this book in the hope of exposing the problem more completely and thereby forcing change.

A system that turns potentially independent thinkers into politically subordinate clones is as bad for society as it is for the stunted individuals. It bolsters the power of the corporations and other hierarchical organizations, undermining democracy. As I will explain in detail, it does this by producing people who are useful to hierarchies, and only to hierarchies: uncritical employees ready and able to extend the reach of their employers' will. At the same time, a system in which individuals do not make a significant difference at their point of deepest involvement in society—that is, at work—undermines efforts to build a culture of real democracy. And in a subordinating system, organizations are more likely to shortchange or even abuse clients, because employees who know their place are not effective at challenging their employers' policies, even when those policies adversely affect the quality of their own work on behalf of clients.

This book is intended for a broad range of professionals, nonprofessionals and students, and for anyone interested in how today's society works. It is for students who wonder why graduate or professional school is so abusive. It is for nonprofessionals who wonder why the professionals at work are so often insufferable, and who want to be treated with greater respect. It is for socially concerned professionals who wonder why their liberal colleagues behave so damn conservatively in the workplace. (Chapter 1 explains how professionals are fundamentally conservative even though liberalism is the dominant ideology in the professions.) It is for individuals who are frustrated by the restrictions on their work and troubled by the resulting role they play—or don't play—in the world. It is also for those who simply find their careers much less fulfilling than they had expected and aren't exactly sure why.

Disillusioned lawyers, doctors, financial analysts, journalists, teachers, social workers, scientists, engineers and other highly educated employees are looking for a deeper understanding of why their lives are stressful and feel incomplete. My hope is that readers will find such an understanding in these pages, along with effective strategies for corrective action. If you are a professional, coming to understand the political nature of what you do, as part of an honest reassessment of what it really means to be a professional, can be liberating. It can help you recover your long-forgotten social goals and begin to pursue them immediately, giving your life greater meaning and eliminating a major source of stress. It can help you become a savvy player in the workplace and reclaim some lost autonomy. And, ironically, it can help you command greater respect from management and receive greater recognition and reward, without necessarily working harder.

If you are a student, understanding the political nature of professional work can help you hold on to your values and moral integrity as you navigate the minefields of professional training and, later, employment. For students

trying to get through professional training intact, this book can serve as something of a survival guide, explaining the frightening experiences and warning of what lies in store.

If you are a nonprofessional, you experience even more lack of control, unfulfilling work, insecurity and other sources of stress than do professionals. As a consequence, the toll on your physical and psychological well-being is even greater than that suffered by professionals. If you want to act individually or collectively to improve your situation, then it pays to know what makes your professional coworkers tick. Such awareness can help you figure out which people you can trust and how far you can trust them. When professional and nonprofessional employees maintain solidarity in the workplace, they can cover for each other and get more concessions from their employer. But any alliance between unequal partners is doubly risky for the less powerful party—in this case the nonprofessionals, who are at the bottom of the workplace hierarchy. By understanding professionals, you reduce the chances of being double-crossed by them. You'll be treated with more respect, too.

Whatever your occupation, you have to deal with a variety of professionals when you are off the job. Most of these professionals work for others, not directly for you. Whether you visit an HMO, send kids to school, request a government service, see a counselor, get assistance from a social worker, deal with a lawyer, file a consumer complaint or contact a local TV station or newspaper, understanding the political nature of professional work will help you get better service. If you are involved in an independent organization working for social change, you have to contend not only with professionals in the corporations or agencies that your group confronts, but also with professionals advising your own organization. Groups that simply trust professionals without truly understanding them are very likely to be misdirected or sold out by those professionals.

And, of course, everyone deals with professionals indirectly, too. For instance, newspapers, magazines, radio and television are filled with supposedly objective news reports, analyses and studies prepared by professionals. What should you believe? To truly understand the output of these or other professionals, you first need to understand the political nature of the professional's role at work.

The political nature of professional work is this book's unifying theme. To make the case that the professional's work is inherently political, I examine not only professionals and what they do (part one: chapters 1 to 6), but also the system that prepares them to do it (part two: chapters 7 to 13) and the battle that one must fight to be politically independent (part three: chapters 14 to 16).

My hope is that whether you are a professional, a nonprofessional or a student, you will find here an unsettling but empowering new way of looking at yourself, your colleagues, the institution that employs or trains you, and society as a whole. This book strives to arm you with a very

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practical analytical tool that you can use to your advantage in whatever individual and collective struggles you find yourself in as an employee, student, organization member, consumer or citizen.

A note on pronouns. To avoid overuse of phrases such as "he or she," I will use female pronouns in part one and male pronouns in part two (the problem doesn't arise in part three). Today most professionals are women, and the female majority, which stood at 53% in 1997, is growing. Women have long made up large majorities in professions with relatively low social status and salary; thus teachers, social workers, registered nurses and librarians have been said to labor in the subprofessions. But today the proportion of women is increasing throughout the professions. Nearly half the students now in medical school and law school, for example, are women, up from about 9% in 1970.

A note on references. Many of the references listed at the end of each chapter make for fascinating reading. I encourage you to look further into topics in this book that interest you, and so I have given lots of references and have spelled things out to make them as easy as possible to look up. Time spent with these materials will surely be thought provoking, informative and entertaining.

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Background and Policy:

Persons are recruited, hired, assigned and promoted without regard to race, religion, color, national origin, citizenship, sex, veteran's status, age, marital status or other protected characteristic.

All other personnel actions, such as compensation, benefits, transfers, layoffs and recall from layoffs, access to training, education, tuition assistance and social recreation programs are administered without regard to race, religion, color, national origin, citizenship, sex, veteran's status, age, marital status or other protected characteristic.

Authority:

Approved: Management Committee

Date: 5/97

PHYSICS TODAY

15 February 1995

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PERFORMANCE REVIEW 1995

PERIOD:

February 1994-January 1995

Employee Name: Jeff Schmidt

Division:

Physics Today

Manager: Charles Harris

Score:

Job Title: Editor

Reporting to: The Editor of Physics Today

OVERALL RATING: 3.0

Major Responsibility 1: Edit articles

Weight: 80% Rating: 3.0

Component tasks:

1. Communicate with authors in person and by telephone, letter, fax, telephone and e-mail to revise and clarify articles, including satisfying referees' comments, and also to obtain approval of authors about editing changes.

2. Edit articles for content, clarity, organization, length, readability, house style, grammar, spelling and impact.

- 3. Negotiate with author for tables, charts, graphs, diagrams, photographs, including possible cover art. Select art, write and edit captions.
- 4. Revise article in conjunction with copy editor, editor and author's corrections.
- 5. Proofread galleys, help prepare page layouts, check bluelines.
- 6. Perform these tasks in accordance with production schedule.

Comments: Jeff is very good at taking technical articles and making them readable. He does a thorough editing job and his articles don't usually need much extra work to get them into publishable form, either in the text or the illustrations. Between February 1994 and January 1995, Jeff edited ten feature articles and two two-page introductory pieces. Because the March 1994 issue closed March 11 and the March 1995 issue closed February 10, Jeff was actually asked to work on 13 issues in this twelve month review period. If we consider the two introductory articles combined to be equivalent to one regular article, Jeff's productivity amounts to 0.85 articles per issue, or 0.9 articles per calendar month.

In Jeff's performance review of 2/94, it was noted that he edited 14 feature articles (published Mar. 93 - Feb. 94), and his production of work was considered "satisfactory under the circumstances." This period included a disruptive relocation to College Park. The review noted that "Jeff is capable of editing 16 articles a year, an average of about 1.3 articles a month. This should be his goal for the next twelve months."

Jeff did not meet this goal in 1994.

Major Responsibility 2: Take responsibility for assigned articles Weight: 15% Rating: 3.5 Score: 52.5

Component tasks:

With regard to assigned feature articles, and in consultation with the editor-in-chief:

- 1. Get in touch with the author when the outline is due.
- 2. Seek advice from a referee on the outline
- 3. Give feedback to the author about the outline.
- 4. Call the author when the manuscript is due.
- 5. Evaluate the manuscript
- 6. Contact a referee

Comments: Jeff carries the heaviest load of assigned articles and is usually thorough, perceptive and reasonably prompt.

Major Responsibility 3: Support the editorial effort of PT Weight: 5% Rating: 3 Score: 15

Component tasks:

- 1. Read submitted manuscripts at request of the editor and submit a review with regard to the suitability of the manuscript for publication. These manuscripts include feature articles, letters to the editor and opinion pieces.
- 2. Submit ideas for feature articles and news stories.
- 3. Attend and participate in staff meetings to develop ideas for articles, news stories, special issues, etc.
- 4. Read relevant periodicals and attend relevant meetings to keep abreast of developments in physics.

Comments: Jeff's reviews are usually insightful, intellectually critical and reasonably prompt. The computer log shows that Jeff reviewed nine feature articles and twenty six letters in this period. Jeff is not a big source of ideas for news stories and feature articles, but he often makes interesting comments in meetings that are well thought out and sometimes these turn out to be ideas that no one else has articulated.

Appraisers Comments:

Jeff is a very capable editor and does an excellent job of editing feature articles and a good job of handling the other duties described above. His productivity on his main function of editing feature articles is below capacity. With the magazine's call for more but shorter articles, Jeff must aim to edit a minimum of 16 articles published April 1995 to March 1996.

Employee's Comments:
SIGNATURES:
Employee: Date: 16 Feb 95
SIGNATURES: Employee: Date: 16 Feb 95 Appraiser: Stevel Binka Date: 2/16/95
, ,
Both the appraiser and the employee must sign and date the form. The employee's signature does not necessarily represent agreement with the review but that he/she has seen the form and participated in the performance appraisal.
H.R. Review:

PHYSICS TODAY

February 13, 1997

PERFORMANCE REVIEW 1997

Employee Name: Jeff Schmidt

Division: Physics Today Manager: Steve Benka

Job Title: Senior Associate Editor

Reporting to: Editor

PERIOD: Feb 1996-Jan 1997 (PT issues March '96-Feb '97)

Overall Rating: 4

Major Responsibility 1: Edit articles

Weight: 80% Rating: 4.0 Rating: 320

Component tasks:

1. Edit articles for content (including art), clarity, organization, length, readability, house style, grammar, spelling and impact. Do this in conjunction with authors and the editor, and so as to meet editorial deadlines.

2. See articles through production. This includes obtaining or performing revisions, proofreading, preparing layouts and checking bluelines, all so as to meet editorial deadlines.

Comments: Jeff is a thorough and professional editor. He edited 15 feature articles in this period, one shy of his agreed upon goal of 16. One of them (ITER debate, June '96) was very difficult to produce and was assigned to him at a late date. He did a fine job with that one, and with all of them. His articles are generally ready on time and often they are early. Jeff was also instrumental in streamlining the articles-editing process within PT.

Major Responsibility 2: Take responsibility for assigned articles

Weight: 15% Rating: 3.5 Rating: 52.5

Component tasks:

In consultation with the editor:

- 1. Contact authors to obtain outlines and manuscripts.
- 2. Contact referees for advice on outlines and manuscripts.
- 3. Evaluate outlines and manuscripts, in conjunction with the editor and referee. Give feedback to the author, to develop an appropriate article.

Comments: Jeff has expressed a desire to always have at least one article ready to edit. He has also gotten involved at much earlier stages in the articles-acquisition process.

Major Responsibility 3: Support the editorial effort of PT Weight: 5% Rating: 3.0 Rating: 15

Component tasks:

- 1. Read submitted manuscripts (feature articles, letters and opinion pieces) at request of the editor and provide a review with regard to the suitability of the manuscript for publication.
- 2. Attend and participate in staff meetings to develop ideas for articles, news stories, special issues, etc.
- 3. Submit ideas for feature articles and news stories.

Comments:

Jeff's reviews are often insightful and useful, but they are not always prompt. His comments in meetings often provide a useful counterpoint to discussions. He is not expected to be a major source of ideas for articles and news stories, but occasionally has ideas with merit.

Appraiser's comments: Jeff is an excellent editor, and handles even the difficult assignments well. His comments and views on editorial ideas and policies are generally insightful.

Jeff needs to increase his article output in 1997 to at least 16, and preferably 18. He also needs to return his manuscript reviews promptly.

OVERALL RATING: 4.0 OVERALL SCORE: 387.5

Employee's Comments:

SIGNATURES:		17 Fal 97
Employee:	八	Date:
Appraiser: Stew K	Ilnka	Date: 13 Feb. 97 Date: 2/13/97
Both the appraiser and form. The employee's agreement with the revparticipated in the pe	signature does not r riew but that he/she	necessarily represent has seen the form and
H. D. Dowiew.		Date:

PHYSICS TODAY PERFORMANCE REVIEW 1998

March 12, 1998

Employee Name:

Jeff Schmidt

Job Title:

Senior Associate Editor

Division:

Physics Today

Reports to:

Editor

PERIOD:

Feb 1997-Jan 1998 (PT issues March '97-Feb '98)

Major Responsibility 1: Edit articles

Weight: 76%

Rating: 3.0

Score: 228

Component tasks:

- 1. Edit articles for content (including art), clarity, organization, length, readability, house style, grammar, spelling and impact. Do this in conjunction with authors and the editor, and so as to meet editorial deadlines.
- 2. See articles through production. This includes obtaining or performing revisions, proofreading, preparing layouts and checking bluelines, all so as to meet editorial deadlines.

Comments: Jeff's articles are generally ready on time and are often early. For this review period, he was asked to produce 16–18 articles. Seven months into this review period, we made an adjustment (reflected in the above weight) because of his imminent fatherhood that effectively reduced his production minimum from 16 to 15, and he met this revised goal. (This counts the two-part Goldstein article (Mar & Apr '98) as two articles, both completed within this period.) He declined several articles that were offered to him for editing (including Fink, Cohn, Jeanloz, Kasap, and a second one for the October special issue).

His work ranged from very good (as with Perl, who praised the editing) through average (Crabtree, Nelson) to poor (the Mourou article had a number of substantive errors of physics and notation, which should have been spotted by Jeff but had to be corrected by the Editor).

Major Responsibility 2: Take responsibility for assigned articles

Weight: 19%

Rating: 3.5

Score: 66.5

Component tasks:

In consultation with the editor:

- 1. Contact authors to obtain outlines and manuscripts.
- 2. Contact referees for advice on outlines and manuscripts.
- 3. Evaluate outlines and manuscripts, in conjunction with the editor and referee. Give feedback to the author, to develop an appropriate article.

Comments: Jeff did well in this area of his job, and regularly nudged authors and reviewers whose items were pending.

Major Responsibility 3: Support the editorial effort of PT

Weight: 5%

Rating: 2.0

Score: 10.0

Component tasks:

1. Read submitted manuscripts (feature articles, letters and opinion pieces) at request of Editor and provide a review with regard to the suitability of the manuscript for publication.

2. Attend and participate in staff meetings to develop ideas for articles, news stories,

special issues, etc.

3. Submit ideas for feature articles and news stories.

Comments: Jeff's reviews of manuscripts have been completed more promptly than in the past, although they were somewhat less helpful. In his review of one Letter to the Editor, for example, he showed questionable judgement in his assessment of the physics competence of the authors of the Hubble Deep Field article (April '97). Not being a reporter, he is still not expected to be a major source of article and story ideas.

Appraiser's comments and Performance Plan: Over the last few years, Physics Today has been undergoing a number of changes—including raising levels of productivity, editorial quality and graphic design. Jeff is very capable of meeting these new demands. At the request of the Editor, Jeff did begin to handle his own correspondence with authors, as is done by all other articles editors. He has not yet begun to do his own keyboarding of editorial changes, as is done by all other articles editors.

In the next review period, he is expected to produce 18 high-quality articles, editing and rewriting text as needed, handling his own correspondence and doing all of his own keyboarding. The articles must be consistent with the magazine's standards of accuracy, readability, brevity, and visual appeal.

In addition, he is expected to provide helpful support to the overall editorial effort of the magazine.

OVERALL RATING:

3.0

OVERALL SCORE:

304.5

Employee's Comments:	
	,
SIGNATURES:	·
Employee: Appraiser: Stevel Benka	Date: 3/23/98
Both the appraiser and the employee must sign a	, ,
does not necessarily represent agreement with the participated in the performance appraisal.	ne review but that he/she has seen the form and

H.R. Review: Date:

Jeff,

It is the responsibility of the article editors at Physics Today to produce finished articles starting from any point in a given article's development.

Thus the responsibility of generating "ready to edit" articles is in part yours. For one example, we had agreed that you would obtain Colson's article on free-electron lasers, and have it edited in case we needed it for an emergency fifth article in the October special issue on the electron; otherwise we could drop it into the magazine a month or two later. Fortunately, we don't need it for the special issue; to my knowledge you have yet to acquire the article.

You were my first choice to edit several articles in late stages of development in the recent past, but turned them all down: Fink (March); Cohn (May; I edited that one, while you edited none that month); Jeanloz to edit with Soulen (August); a second article for October (you were reluctant to take Perl); Kasap for November.

As recently as two months ago, when you wanted to take paternity leave (which I OK'ed), you told me you didn't want any additional articles through the end of this year. As noted above, I offered you some anyway and you turned them down. You expressed no interest in articles, so I left you out of my plans for them.

I understand your special circumstances and once again offer you my heartfelt congratulations on the birth of Joshua Rose. If you are now ready once again to accept the responsibilities that go with feature articles, I can supply you with as many as you want. The articles that are currently "ready to edit" have been assigned to others. Nevertheless, I am sure we can reach a mutually acceptable state of affairs.

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charles -	1
What is this all about? Are you and steve a PHYSICS TODAY IMER	it of phase;
-Jeff Fill)() IUVAI IVIER	no
To: Jeff Schmidt	October 1, 1998
From: Steve Benka Subject: Performance expectations, sabbatical	•
• •	
Through the November 1998 issue, you are well on your plan for articles laid out in your last review, having compleperiod. (This credits you with ½ article for your contribute	eted 101/2 articles in the current review
To avoid misunderstandings, recall my expectations for your completed, high-quality articles per year; consistently consupportive of the overall editorial effort of the magazine.	
You have asked for a six-month sabbatical and we would Until a means of covering your workload is found, however meet your performance goals. Upon returning from a sabbremain the same.	er, I expect you to continue working to
In the spirit of cooperation, please complete the remainder the original to me.	r of this page, keep a copy and return
I have read this memo. Initials: Date:	
Check one:	what is this other
I find this memo acceptable. I find this memo unacceptable, in whole or in part.	What is this, other
	> than quateurish?
Comments: Please see attached page,	
Plase see attac.	
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PHYSICS TODAY PERFORMANCE REVIEW 1999 August 13, 1999

Employee Name: Jeff Schmidt

Job Title:

Senior Associate Editor

Division:

Physics Today

Reports to:

Editor

O

PERIOD:

Feb 1998-Aug 1999 (PT issues March '98-Sep '99) - incl. 6-mo. sabbatical

Major Responsibility 1: Edit articles

Weight: \$0%

Rating: 2.75

Score: 220

76% \$ 70% \$.

Comments: For this review period, Jeff was asked to produce 18 high-quality articles, and he actually produced 13.5, which is unacceptable. This counts his partial contribution to the May '98 50th anniversary issue as 1/2-article rather than 1, because he had to be removed from the project. Given that one of Jeff's articles (Segey, 8/98) was extremely difficult (just making it publishable was a good accomplishment), and two other articles were assigned to Jeff on relatively short notice, but he nevertheless completed them in time for publication, 17 articles might have been deemed an acceptable number (rating a 3.0). Delivering more than 3 full articles less than that, however, is a very large shortfall, and rates at best a 2.0.

Aside from the anniversary issue, Jeff's editing was satisfactory, rating a 3.5. He still needs to find ways, such as creative rewriting, to better improve the readability of our less talented authors.

Major Responsibility 2: Take responsibility for assigned articles

Weight: 18% Rating: 3.5

Score: 52.5

Comments: Jeff till does well in this area of his job.

Major Responsibility 3: Support the editorial effort of PT

Weight: 5%

Rating: 1.5

Score: 7.5

Comments: During this review period, Jeff repeatedly engaged in disruptive and counterproductive behavior, damaging a collegial office climate and thereby undermining the editorial effort of *Physics Today*. Such behavior is unacceptable, Two examples will suffice.

(1) As noted above, Jeff was removed from working on the PT Anniversary issue. That was for two reasons: He produced a very unbalanced set of decadal excerpts, strongly centered on political issues, whereas he had been directed to focus on physics excerpts while his nonphysicist partner focused on other excerpts. All five decades paired a physicist with a nonphysicist in that manner. When his partner pointed out the imbalance and made suggestions to fix it, Jeff rebuffed him, provoking his partner to quit. For his failure to produce excerpts consistent with the stated goal, and for his failure to work respectfully and collegially with a fellow editor, he was removed from the job, which was completed by his partner and another physicist on the staff

who had already completed his decadal excerpts.

(2) Jeff wrote a response to his last performance review, as he is entitled to do. The response was 19 pages long (with another 38 pages of addenda), reacted to out-of-context comments from his review, and dwelled at length on issues not related to his job or to his review. Jeff made no attempt to discuss his response with his manager, but instead surreptitiously circulated it to PT staff members, whether they wanted to see it or not. Such an action seems to actively undermine not only the cohesiveness and morale of the staff, but also the staff's respect for management. Such an action in no way constructively supports the editorial efforts of PT; rather, it destructively undermines such efforts.

O

Appraiser's comments and Performance Plan: This review covers a 12-month work period, albeit an 18-month calendar period. Jeff took a six-month sabbatical during this review period, from mid-December to mid-June. In the two months since his return, he has worked effectively at his job, and contributed positively in staff meetings.

At Jeff's request, his salary will be reduced by 1/3, and his workload will also be reduced by 1/3, to 12 articles per year. As always, the articles must be of high quality, with Jeff editing and rewriting text as needed. The articles must be consistent with the magazine's standards of readability, accuracy, brevity, and visual appeal. He must continue to handle his own correspondence and do all of his own keyboarding.

In addition, he is expected to provide helpful support to the overall editorial effort of the magazine.

OVERALL RATING: 28 3.0	OVERALL SCORE: 280.0
Employee's Comments:	्ष्र . चेद्रहर्
See attached two-page	memo dated 19 August 1999

SIGNATURES:	
Employee: J. Solmult	Date: 19 Aug. 99
Appraiser Sleve Benka	
Appraiser: Jourges	Date:

Both the appraiser and the employee must sign and date the form. The employee's signature does not necessarily represent agreement with the review but that he/she has seen the form and participated in the performance appraisal.

H.R. Review: James Of Land		Date:	8/23/99
			, , , , , , , , , , , , , , , , , , , ,
/	2		

8/20/99

19 August 1999

To: Stephen Benka, Editor, Physics Today, American Institute of Physics

From: Jeff Schmidt, Senior Associate Editor, Physics Today

Subject: My 1999 performance review (dated 13 August 1999 and signed by you on 17 August 1999)

O

I was disappointed to find that you wrote my 1999 performance review in the same punitive spirit as my 1998 review. Like my 1998 review, the present review understates or completely leaves out my accomplishments and does not mention the praise that I have received for my work. At the same time, it contrives deficiencies and plays them up. I had thought you had gotten beyond that.

I was also surprised to see that you used an unchanged version of my 1998 review as a starting point for the 1999 review, thereby compounding many serious errors. As you know, in my memo of 27 April 1998 I brought to AIP's attention a number of serious errors in my 1998 performance review — places where statements in the review conflict with the (still existing) written record. AIP did not find fault with any of my corrections, yet you have proceeded as if they had never been brought to AIP's attention.

Hence, not perceiving a genuine interest in accuracy in these matters, let alone fairness, I will not detail here the many serious errors of fact in the 1999 review and the obvious reasons for those errors. I will just make the general statement (and give a few examples) that the 1999 review stands in conflict with the written record as much as the 1998 review did — and for the same reasons, which are detailed in my memo of 27 April 1998. The 1999 review appears to be an extension of the 1998 review: It continues the step-by-step lowering of my appraisal from above average to average to below average, even though the quality and quantity of my work remains as high as ever. Here are the examples;

1. The 1999 review states that I edited 13.5 articles for the Physics Today issues of March 1998 – September 1999. In fact I edited the equivalent of at least 17 articles for those issues: Goldstein, Sullivan, Barth, another article by Goldstein, Ramaty, De Kee, Busch-Vishniac, Hemley, Segev, Bering, Canfield, Vogel, Ertl, Redish, Bernholc and work for the May 1998 special issue amounting to the equivalent of at least two articles. The huge amount of extra work that I did for that special issue was clear to you and to everyone else at the time. I worked day and night to meet the deadline, and you even gave me the AIP "Pat on the Back" award for my "extra effort" and "outstanding performance." (See the attached pages for a copy of the award.) But my 1999 performance review rewrites history to re-estimate the amount of work that I did as the equivalent of editing one-half of an article.

I always work ahead, of course, as magazine work requires, and so I have edited an 18th article (by Clifford Will) during the stated review period (February 1998 – August 1999). However, this article will not be published in the issues counted for my 1999 review (March 1998 – September 1999), and so should not be counted for that review, even though I did the work during that period. Except for my 1998 review, that is how the accounting has been done

on my performance reviews for 17 years, and that is how it should continue to be done unless it is changed by mutual agreement, before the work is done. It is unfair for you to change the accounting method at the end of the review period while you are writing the review, as you did in my 1998 review (see page 4 of my memo of 27 April 1998) and as you did again in my 1999 review, when you reverted back to the long-standing method. Each of these self-serving changes reduced the number of articles credited to me on my 1999 review. The consistent and fair bottom line for my 1999 review is 17 articles, not 18 — and certainly not "13.5."

- 2. Similarly, it is unfair for you to change my job description after I have done the work. Since 25 August 1997 my three areas of work have been weighted at 70%, 25% and 5% (see your written statement of 25 August 1997, a copy of which is in the addenda of my memo of 27 April 1998.) You altered those percentages while you were writing my 1999 review to 80%, 15% and 5%, lowering my rating. I am particularly surprised that you did that, because I thought you had promised a more above-board management style after I objected to an earlier (19 August 1997), similar action on your part. (For a description of that action, see page 3 of my memo of 2 September 1997, a copy of which is in the addenda of my memo of 27 April 1998.)
- 3. Your description of the way the work on the May 1998 special issue was organized is incorrect. The editors were told to excerpt "the best of Physics Today" for that issue, and in the decade assigned to me and my partner, that material happened to center on political issues. The staff was not, in fact, required to divide the work along "physics" and "political" lines as you suggest. One pair of staff members, for example, simply divided their decade in half, with each person excerpting the best material from a five-year period. Contrary to what the review says, I did not rebuff or work less than respectfully and collegially with other staff members. In fact, I implemented my partner's suggestions, making major changes in the 8-page section to do so. My partner did not quit as you claim. Your characterization of my work with my partner is an incorrect speculation, a self-serving assumption about what might have happened. If you doubt the accuracy of anything that I have said in this paragraph, you need only ask the staff members to whom I have referred.
- did so verbally and we discussed it at length. You then consulted with Charles Harris about my request to correct errors in the review, and you refused to do so. I then appealed to Theresa Braun, AIP Director of Human Resources, and James Stith, AIP Director of Physics Programs. Contrary to your claim, there was nothing surreptitious about my not directing that appeal to you or about the fact that others may have seen my appeal. I had already made the appeal to you and had already discussed the issues with you.

These are just a few of the many inaccuracies in my 1999 performance review. They add to the evidently yet-uncorrected inaccuracies in my 1998 review, which should be made to conform to the written record promptly.

Finally, it is discouraging to see that it "seems" to you that I have acted to worsen the staff's morale problems, lower-than-desired respect for management and deficient cohesiveness. This speculation is way off the mark and suggests that you are looking in the wrong place to solve these very serious problems, to the detriment of the staff and the physics community.

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Stephen Benka - First thoughts on your re

ise to the review

- 00

Page 1

My response to years
response.
- Steve 8/20/99.

From:

Stephen Benka

To:

Jeff Schmidt

Date:

Thu, Aug 19, 1999 7:09 PM

Subject:

First thoughts on your response to the review

Jeff,

Because you didn't have time to discuss your response to your review when you gave it to me, here are my Initial thoughts on the inaccuracles that you perceive. Let's discuss this further as soon as possible.

Your example #1: You neglected to mention that, initially, you had wanted to count Goldstein as one long article, not two. However, because you had completed Goldstein within the previous review cycle, and because you were two full articles short of your already reduced (because of your cancelled paternity leave) production goal for last year, we counted them as two and included them in that cycle. This ensured that you would receive an "acceptable" rating, which was clearly in your best interest.

Each editor who worked on decadal excerpts for the anniversary issue did the equivalent of one full article's work in his or her decade. There would be no reason to count yours otherwise, except that your work on your decade had to be largely redone by someone else.

As of today, to my knowledge, the Will article is not yet completed. If it were, I would count it as an article completed within this review period.

Your example #2: You are right that I should have discussed the change of weights with you. I apologize for not having done so. Let's discuss and agree on your job description as soon as possible.

Your example #3: My description is accurate.

Your example #4: Your appeal to Charles Harris, Theresa Braun, and James Stith was the proper procedure to follow. However, as we discussed earlier today (and at other times), your surreptitious circulation of your response to the staff was entirely inappropriate.

I still would like you to tell me which member or members of the staff you have discussed this year's review with.

-Steve

U.S. Department of Labor

Employment Standards Administration
Office of Federal Contract
Compliance Programs

Washington District Office Reporters Building, Room 203 300 7th Street, SW RWAShington DC 20107



CF1/204/A1P

RECEIVED

JAN 2 2 1997

CHECUTIVE DIRECTOR'S UTFICE AMERICAN INST. OF PHYSICS

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dr. Marc Brodsky
Executive Director & CEO
American Institute of Physics
One Physics Ellipse
College Park, Maryland 20740

Dear Dr. Brodsky:

Our recent compliance review of your equal employment opportunity policies and practices at American Institute of Physics, One Physics Ellipse, College Park, Maryland 20740 was completed on November 13, 1996.

This is to advise you we found no apparent deficiencies or violations of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 USC 4212). This determination may be modified by the Regional Director, or by the Director, of OFCCP, within 45 days of issuance of this letter.

The Office of Federal Contract Compliance Programs sincerely appreciated the cooperation and courtesies extended by you and your staff during the conduct of the compliance review.

Sincerely,

LEWIS B. RAMSEY Di

District Director

U.S. Department of Labor

Employment Standards Administration
Office of Federal Contract
Compliance Programs
. Washington District Office
Reporters Building, Room 200
300 7th Street, J...
Washington, D.C. 20407



AUS 0 6 1999

Reply to the Attention of:

OMB No. 1215-0072 Expires 01/31/99

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Ms. Alice Gersh Senior Employment Specialist American Institute of Physics 1 Physics Ellipse College Park, MD 207430 AUG 0 9 1999

Dear Ms. Gersh:

Our recent compliance check of your facility heretofore known as the American Institute of Physics has been completed. This compliance check has been an inspection of some of the records you are required to maintain in accordance with OFCCP's recordkeeping requirements.

During this compliance check of your establishment we determined that you have made available for inspection the documents specified in the scheduling letter for the compliance check. Therefore, based on this limited inspection of the recordkeeping requirements under 60-1.12, the compliance check of your establishment is closed.

This has been a limited documents review and does not represent a comprehensive evaluation of your employment practices and policies to determine compliance with the requirements of the Executive Order and regulations.

The Office of Federal Contract Compliance Programs sincerely appreciates the cooperation and courtesies extended by you and your staff during the conduct of the compliance check.

Sincerely,

LEWIS B. RAMSEY District Director

Lewis B. Ramsey

PhD departments accounting for more than half of all African-Americans earning PhDs in physics from 1973-1998.

•	Number
Stanford University	23
Howard University	18
MIT	16
University of California - Berkeley	7
Alabama A&M University	7
UCLA	5
Kent State University	5
Georgia Institute of Technology	5
Florida State University	5
American University	4
New York University	4
SUNY - Albany	4
University of Maryland - College Park	4
University of Michigan - Ann Arbor	4
Brown University	3
Catholic University of America	3
CUNY	3
Illinois Institute of Technology	3
Polytechnic University	3
Princeton University	3
Total number of African-American physicists	
from all PhD-granting physics departments	226

Note Slighty more than a fourth of all African-American PhD's come from 3 physics departments

Source: AIP Statistics Division compiled from data collected by the National Science Foundation and published in their WebCASPAR online database.

PhD departments accounting for nearly half of all Hispanic-Americans earning PhDs in physics from 1973-1998.

•	Number
University of Texas - Austin	14
MIT	12
University of California - Berkeley	12
University of Maryland - College Park	12
Stanford University	11
University of Illinois - Urbana	10
UCLA	10
Penn State University	9
University of Arizona	9
Texas A&M University	8
University of Florida	8
University of Massachusetts - Amherst	8
University of Wisconsin - Madison	8
Cornell University	7
Harvard University	7
New York University	7
SUNY - Stony Brook	7
University of Colorado - Boulder	7
CUNY Graduate Center	6
Florida State University	6
University of California - Irvine	6
University of California - San Diego	6
University of Michigan - Ann Arbor	6
University of Puerto Rico - Rio Piedras	6
Total number of Hispanic-American physicists	
from all PhD-granting physics departments	389

Source: AIP Statistics Division compiled from data collected by the National Science Foundation and published in their WebCASPAR online database.

Page # 1 of 1

Background and Policy:

All employees have a primary responsibility to the American Institute of Physics and are expected to avoid any activity which may interfere, or have the appearance of interfering, with the performance of his or her job responsibilities.

- 1. A conflict of interest exists if any of an employee's outside business or other interests could adversely affect motivation or job performance at AIP.
- 2. It is a conflict of interest if an employee's job makes it possible to influence in any way the Institute's relationship with a potential vendor or customer, in which the employee has a financial interest.
- 3. An AIP employee may not serve as a consultant, or as a director, officer or employee of a company that competes or deals with AIP, or seeks to do so, unless he or she obtains the prior consent of the officer in charge of the department.
- 4. It may also be a conflict of interest if an employee's outside activities (which in and of themselves may not be conflicts of interest) are so demanding on the employee's time that they interfere with his or her job performance at AIP.

Authority:

Approved:

Management Committee

Date: 5/97

Procedure:

Behaviors that might involve a Conflict of Interest include (but are not limited to):

- 1. An employee writing and publishing a physics or physics-related article or book, especially if research was done in connection with their AIP position, without first offering the Institute the opportunity to publish.
- 2. An employee offering any job-related services (e.g., editing physics or physics-related articles or books) for another directly or indirectly competitive company.
- 3. An employee not informing her/his manager of any job-related services being performed for a competitor or another publisher.

Any potential Conflict of Interest concerns should be brought to the attention of the Officer in charge of the area in which the employee works.

Termination, General Definitions

#308.01

Page # 1 of 3

The Institute hopes that the employment relationship established with its employees will be rewarding and long term. However, recognizing that turnover is inevitable, AIP has established guidelines and procedures for termination of employment. There are two categories of termination:

- 1. Voluntary terminations are those initiated by an employee, e.g., resignation or retirement.
- 2. Involuntary terminations are those initiated by AIP.

Each of these types of termination is addressed under a separate policy, below:

Resignation, #309.02 Retirement, #309.03 Involuntary Termination, #309.04

Attachment:

Exit Interview form Termination form Service Request form

Page # 1 of 1

Background

and Policy:

On some occasions, employment may be terminated on the initiative of the management of the Institute. Discharge can be for any reason not prohibited by law. Employees are free to resign at any time and, correspondingly, AIP reserves the right to discharge an employee for any reason, with or without notice.

Authority:

Approved:

Management Committee

Date: 5/97

Procedure:

- 1. The Supervisor and/or Manager <u>must</u> seek guidance from Human Resources before proceeding with a termination. Adequate documentation is necessary. (Supervisor or Manager will be asked to complete a Termination Form).
- 2. At the time of termination, an Exit Interview will be conducted with a member of the Human Resources Division. Among other items covered, the employee will be informed of:
 - The right to continue benefits (COBRA)
 - Any entitlement to payment for unused accrued vacation time
- 3. The terminating employee will be asked to return:
 - Money due, e.g., tuition reimbursement or computer subsidy
 - Credit card & Telephone calling card
 - Keys to office, desk, files
 - ID card and/or Access Card
 - Any AIP-purchased equipment in their possession (e.g., computer, fax machine, cellular phone or pager)

Refer to the Termination & Exit Interview forms following policy #309.01.

Reference:

Policy on Progressive Discipline, #321.06

Policy on Severance Pay, #332.04

Page # 1 of 2

Packground

and Policy:

Poor performance and/or violation of AIP policy may result in termination. Because AIP values its employees, however, every effort will be made to avoid termination, observing the procedure described below. When reasonable attempts to resolve the situation have failed, an employee will be discharged.

Progressive discipline is an effective method of identifying and correcting undesirable employee behavior. However, some situations may require immediate imposition of disciplinary measures. including termination.

All employees of AIP are employed at will. Accordingly, employees may be terminated at any time. with or without cause and with or without notice. The progressive discipline procedures described herein may (or may not) be used by the Institute at its sole discretion on a case-by-case basis.

A partial list of terminable offenses can be found in the Employee Handbook in the "Employment Section" under "General Rules of Conduct." Managers and supervisors should always contact Human Resources for advice before taking any action.

Authority:

Approved:

Management Committee

Date: 5/97

Procedure:

- 1. An employee's immediate supervisor discusses performance problems with the employee, citing specific examples, required improvements and a timetable. Supervisors should keep a written record of each conference where employee performance deficiencies are discussed. Supervisors should also keep their manager informed of performance problems and steps taken to correct same.
- 2. When poor performance continues, supervisor should again confer with the employee, stating clearly that failure to improve will result in termination. At this time, an Employee Warning Notice should be completed and sent to Human Resources.
- 3. If sustained improvement is not achieved, supervisor should consult with their manager and with the Human Resources Division about initiating termination procedures.
- At any time in this process, an employee who wishes to discuss concerns regarding their performance 4. and continued employment may go through the chain of command (as described in the Policy on Conflict Resolution, #322).

Attachment:

Employee Warning Notice

Reference:

See Involuntary Termination, #309.04 and Conflict Resolution, #322



One ics Ellipse College Park, MD 20740-3843

Tel. 301-209-3100 Fax 301-209-0847

http://www.aip.org

2000 AFFIRMATIVE ACTION PROGRAM

For

AMERICAN INSTITUTE OF PHYSICS - MARYLAND

Program Completed by:

Program Approved by:

Theresa C. Braun

Director of Human Resources

EEO Communicator

Member Societies:

The American Physical Society

Optical Society of America

Acoustical Society of America

The Society of Rheology

American Association of

Physics Teachers

American Crystallographic

Association

American Astronomical Society

American Association of

Physicists in Medicine

American Vacuum Society

American Geophysical Union

Other Member Organizations:

Sigma Pi Sigma Physics

Hr. Society

S., of Physics Students Corporate Associates Address:

One Physics Ellipse

College Park, Maryland 20740-3843

Marc H. Brodsky

Executive Director/CEO

This Affirmative Action Program is effective 1/1/00 to 12/31/00



One I as Ellipse College Park, MD 20740-3843

A NOTICE AND INVITATION TO ALL EMPLOYEES AND APPLICANTS

Tel. 301-209-3100 = ax 301-209-0847

MARC H. BRODSKY, EXECUTIVE DIRECTOR/CEO

http://www.aip.org

AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

American Institute of Physics has been and will continue to be an equal opportunity employer. To assure full implementation of this equal employment policy, we will take steps to assure that:

- a. Persons are recruited, hired, assigned and promoted without regard to race, religion, color, national origin, citizenship, sex, veteran's status, age or disability.
- b. All other personnel actions, such as compensation, benefits, transfers, layoffs and recall from layoffs, access to training, education, tuition assistance and social recreation programs are administered without regard to race, religion, color, veteran's status, national origin, citizenship, sex, age or disability.
- c. Employees and applicants shall not be subjected to harassment, intimidation, threats, coercion or discrimination because they have: (I) filed a complaint; (2) assisted or participated in an investigation, compliance review hearing or any other activity related to the administration of any federal, state or local law requiring equal employment opportunity; (3) opposed any act or practice made unlawful by any federal, state or local law requiring equal opportunity or (4) exercised any other right protected by federal, state or local law requiring equal opportunity.

Member Societies:
The American Physical Society
Optical Society of America
Acoustical Society of America
The Society of Rheology
American Association of
Physics Teachers
American Crystallographic
Association
American Astronomical Society
American Association of
Physicists in Medicine
American Vacuum Society
American Geophysical Union

Other Member Organizations:
Sigma Pi Sigma Physics
Yor Pociety
Sou of Physics Students
Corporate Associates

I have appointed Theresa Braun to take on the responsibilities of E EO Coordinator. As EEO Coordinator, she will be responsible for the day to day implementation and monitoring of this Affirmative Action Plan. As part of that responsibility, she will periodically analyze the Company's personnel actions and their effects to insure compliance with our equal employment policy.

If you, as one of our employees or as an applicant for employment, have any questions about this policy or would like to be considered under our Affirmative Action Plan, please see Theresa Braun during regular business hours.

I have reviewed and fully endorse our Affirmative Action and Equal Employment Opportunity program. In closing, I ask the continued assistance and support of all of the Company's personnel to attain our objective of equal employment opportunity for all,

Marc H. Brodsky

Executive Director/CEO

DISSEMINATION OF EQUAL EMPLOYMENT OPPORTUNITY POLICY

I. INTERNAL DISSEMINATION

The Institute will consider taking the following actions to disseminate its Affirmative Action and Equal Employment Opportunity Policy as appropriate, on a regular and continuing basis:

- A. Including the Affirmative Action and Equal Employment Opportunity

 Policy statement in its policy manual and employee handbook, as published. A copy of our EEO

 Policy, which is contained in our Employee Handbook, is attached at the end of this section.
- B. Meeting with supervisory personnel to explain the intent of the Affirmative Action and Equal Employment Opportunity Policy and their individual responsibilities for its implementation. We conducted supervisory training for all management about equal employment opportunity, affirmative action and sexual harassment during Plan Year 1999 and have continued the training into Plan Year 2000. For example, we communicate our commitment to equal employment opportunity to managers and supervisors in regular meetings and through the company newsletter. Our commitment to equal opportunity also is communicated to new applicants during our recruiting process.
- C. Scheduling special meetings with employees or using Institute newsletters to discuss and explain individual employee responsibilities or opportunities under the affirmation action program. During the current plan year we will be communicating to all employees information about our affirmative action program and equal employment opportunity in the workplace. For example, we will discuss equal employment opportunity with executive management and hiring managers in regular meetings, and we communicate our commitment

through the company newsletter, employee handbook, policy and procedures manual, and our employee orientation program.

- D. Discussing our equal employment policy during any orientation programs we hold, at which time all new employees (and if applicable, transferred and promoted employees) will be advised of our commitment to affirmative action and equal employment opportunity. Our Affirmative Action and Equal Employment Opportunity Policy statement and policy statements affirmatively supporting the employment of minorities, veterans, the disabled and women will be explained during these sessions. During these orientation sessions a Sr. management representative are present from every area of the Institute, including Human Resources who explains the function of that department. Our Affirmative Action and Equal Employment Opportunity Policy statement is regularly re-enforced to key decision makers at the Institute. Our Affirmative Action and Equal Employment Opportunity Policy statements affirmatively supporting the employment of minorities, veterans, the disabled and women are explained during these sessions. A copy of our "New Employee Checklist," which is distributed as part of the orientation process and addresses equal employment opportunity and affirmative action in the workplace, is attached at the end of this section.
- E. Posting the Affirmative Action and Equal Employment Opportunity Policy, along with all required State and federal informational posters on our bulletin boards and updating such posters as required. Our "Affirmative Action and Equal Employment Opportunity Policy Statement," "Invitation To Covered Veterans To Self Identify", "Invitation to Individuals with Disabilities to Self Identify" and all required federal and state posters are posted in the lunchroom.

F. Including pictures of both minority and non-minority men and women in all employment and consumer advertising.

II. <u>EXTERNAL DISSEMINATION</u>

Our equal employment opportunity policy will be disseminated externally, as considered appropriate, as follows:

- A. All recruiting sources, when utilized, will be advised of the Institute's policy. The Institute will ask for written acknowledgment by each such recruiting source that it will comply with our policy. Thereafter, on a regular basis, such recruiting sources will be notified of our continuing commitment to equal employment opportunity. Copies of letters to affirmative action recruitment sources are attached at the end of this section.
- B. The equal opportunity clause will be included in all purchase orders, leases, contracts, etc., covered by Executive Order 11246, as amended. A copy of our purchase order, which contains language that incorporates by reference the equal employment opportunity clause, is included at the end of this section.
- C. When we advertise in newspapers for prospective employees, the advertisement will include language that communicates that we are an Equal Employment Opportunity Employer, such as "We are an Equal Employment Opportunity Employer M/F/D/V." We also will direct all newspapers not to place help-wanted advertisements in race or sexsegregated columns. Copies of recent newspaper advertisements have been included at the end of this section.
- D. Prospective employees are informed that the Institute is an equal opportunity employer which maintains an affirmative action program through the notices we post

in areas accessible to applicants and employees and our application for employment. Moreover our affirmative action program is addressed during new hire orientation. A copy of our Employment Application is attached at the end of this section.

- E. Our primary subcontractors, vendors and suppliers will be sent written notification of our Affirmative Action and Equal Employment Policy. Implementation will require assurances of compliance with, inter alia, Executive Order 11246, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 and the Vocational Rehabilitation Act of 1973. Similar assurances will be required from new subcontractors, vendors and suppliers as such relationships are established. A copy of our Vendor Certification package is attached at the end of this section.
- F. In the event that employees are featured in help-wanted, product or consumer advertising, employee handbooks or manuals or similar publications, both minority and non-minority men and women will be pictured and included.

Equal Opportunity in Employment

The Institute is an equal opportunity employer. We believe that every employee has the right to be treated with dignity and respect. Consequently, we will not discriminate on the basis of age, race, creed, color, sex, national origin, citizenship, disability, marital status, or any other protected characteristic. Our management team is dedicated to ensuring full compliance of this policy with respect to recruitment, advertising, hiring, placement, promotion, rates of pay or other forms of compensation, selection for training, layoffs, termination, and general treatment during employment.

All individuals have unique abilities. We are committed to employing applicants and employees on the basis of ability, rather than disability. This commitment includes making reasonable accommodations for known physical or mental limitations of otherwise qualified individuals with disabilities. A reasonable accommodation is a modification or adjustment to a job, the work environment or the way things usually are done that does not pose an undue hardship to the Institute.

AMERICAN INSTITUTE OF PHYSICS

j

We have received your correspondence and thank you for considering the American Institute of Physics as a polential employer.

Please be assured that your qualifications will be carefully reviewed in connection with our current openings.

In the event we have a position to discuss with you, we will contact you.

Sincerely,

For government reporting purposes, we request that you provide the following race and gender data. Your response is voluntary and will not affect our consideration of your employment. Your response will be filed separately from your employment application and resume.

Please check all applicable boxes:

□ Male □ Female

☐ Asian/Pacific Islander

O White O Black

O American Indian/Alaskan Native

The American Institute of Physics is an Equal Opportunity Employer

CONSIDERATION OF MINORITIES AND WOMEN NOT CURRENTLY IN THE WORKFORCE

As required by Section 60-2.13 of the Office of Federal Contract Compliance Programs Affirmative Action Guidelines, we will make reasonable affirmative action efforts to recruit, train and promote minorities and women who are not currently in the workforce, having the requisite skills to perform jobs within our Institute. The Institute regularly requests that minority and female employees refer applicants for employment at American Institute of Physics. The Institute will monitor its recruitment efforts and hiring practices to ensure good faith efforts. Moreover, the Institute will identify and remedy any problem areas that could interfere with the success of such efforts.

Employee Referral Program

#305

Page # 1 of 1

Background and Policy:

Employees of the Institute can receive a monetary bonus for referring applicants who are hired for a position at AIP and successfully complete six continuous months of employment. To be eligible for this payment, the referring employee must be employed by AIP at the time the new hire completes his/her introductory period of employment. When these conditions are met, the payment is as follows (depending on the employment category of the new hire):

1.	Regular full-time employee	\$400
2.	Regular full-time employee in Exempt Grade 7 and above, an additional payment after new employee	
	completes a year of continuous employment	\$400
3.	Regular part-time employee	\$200
4.	Hourly or cottage industry position	\$150

Note: Officers of the Institute, Human Resources staff and the hiring manager/supervisor are not eligible to receive this bonus:

Authority:

Approved:

Management Committee

Date: 6/98

Procedure:

An applicant should indicate the name of the employee who suggested he/she apply for the vacant position. However, it is the referring employee's responsibility to notify Human Resources of the referral within two weeks of the hire.

INSTITUTE SUPPORT OF COMMUNITY ACTION PROGRAMS

The Institute notifies appropriate public and private organizations, as noted throughout this Plan, of its commitment to equal employment opportunity and affirmative action and will seek referrals of minorities, women, the disabled, veterans and older workers from those sources.

I. <u>IN GENERAL</u>

The Institute will continue to make good faith efforts to work with and support community action programs and will consider such diverse activities as:

- A. Encouraging minority and female employees to participate actively in National Alliance of Businessmen programs for youth motivation.
- B. Supporting vocational guidance institutes, vestibule training programs and similar activities.
- C. Assisting secondary schools and colleges in programs designed to enable minority and female graduates of these institutions to compete in the open employment market on a more equitable basis.
- D. Supporting programs developed by such organizations as National Alliance of Businessmen, the Urban Coalition and other organizations concerned with employment opportunities for minorities or women.

Application for Employment

PLEASE PRINT

CURRENT AS OF 9/97



₁ual access to programs, services and employment is available to all persons. Those applicants requiring reasonable accommodation to the application and/or interview process should notify a representative of the Human Resources Department.

Position(s) applied	I for			Date of application	
Referral Source	☐ Advertisement	☐ Employee	☐ Relative		
	□ Walk-in	☐ Private Emplo		Government Employm	- •
			· · · · · ·	Other	
Name					
	LAST		FIRST		MIDDLE
Address	STREET	CITY	STATE ZIP CO	Social Security #	
I elephone # \	Mobile/	Beeper/Other Phone t	 ()	E-mail Address	
If necessary, best tir	ne to call you at home is				AM PM
If yes, work number	and best time to call		()	. I es : No
If you are under 18	and it is required, can you	u furnish a work perm	uit?		Yes No
Have you ever been	employed here before?				
If yes, give dates	•••••			From// To	, [· Tes [_] 140
Are you legally eligi	ble for employment in th	is country?		7011	[] Yes [] No
				re?	
	desired				
Will you relocate if j	ob requires it?	Yes N	o Will you trave	l if job requires it?	•
Are you able to meet	the attendance requirem	ents of the position?.			
Will you work overti	me if required?	•••••			**************************************
If no, please explain					· 1 es !_ 1 no
Have you ever been l	bonded?	······			Yes No
Have you ever pled "	'guilty" or "no contest" to	o, or been convicted o	of a crime?		Yes No
S, please provide	date(s) and details	N AUTOMATIC BAR TO EMPLOYM	IENT. FACTORS SUCH AS DAT	TE OF THE OFFENSE, SERIOUSNESS AND NATI	103 L.: 140
				State	

Interview Evaluation

PLEASE PRINT

CURRENT AS OF 9 97



Name of Applicant				Date	1 1
☐ General Interview ☐ Position I	nterview	for		B TITLE '	
This is 1st Intervi		2nd Interv		3rd Interview	
Date/Time of Interview/_/:	AM PM Inter	viewer		Title	
Department Manager/Supervisor (if applicable)				Title	
Interviewed Applicant on: Date//	Time	AM PM			
Instructions: Carefully evaluate applicant's interindicate the applicant's performance. Indicate "Nating using the scale provided and write this numperformance score.	I/A" in the po nber in the po	ints box if the rat	ing category is not ap	plicable. Assign point	s for each
Definitions of Redominance Renings					
 O — Outstanding — Applicant is exceptional. It being far superior to others. V — Very Good — Applicant clearly exceeds por requirements. G — Good — Applicant is competent and depen 	sition	standard U – Uns	rovement Needed — ls required of the job satisfactory — Applic Not Applicable	•	
standards of the job.					
Reformance Exemps	e-Calleni	ing steller	a Suppor	inverdigeilsenas	ommeness
 Experience – The extent to which the applicant's background and experience are consistent with the essential functions of the job. 	V :	100-90 89-80 79-70 69-60 Below 60			
 Education – The extent to which the applicant's schooling is relevant and sufficient for the essential functions of the job. 	G i	100-90 89-80 79-70 69-60 Below 60			
3. Job Knowledge – The extent to which the applicant possesses the practical/technical knowledge required to perform essential functions of the job.	V G I	100-90 89-80 79-70 69-60 Below 60			
 Information About General Work Field - The extent to which the applicant has thorough knowledge or is familiar with the field. 	O V G I U	100-90 89-80 79-70 69-60 Below 60			
 Communication Skills – The extent to which the applicant effectively expresses and conveys ideas. 	O : V : G : I : U :	100-90 89-80 79-70 69-60 Below 60			
6. Motivation – The extent to which the applicant appears to have a true desire to work and has an interest in the position.	O V G I U	100-90 89-80 79-70 69-60 Below 60		D0	1600

INDIVIDUAL ORIENTATION DISCUSSION CHECKLIST

Appropriate Forms W-4		Conducted by Hu		
I-9			e For	ms
Application (From Interview) Affirmative Action Form (From Interview) Direct Deposit Form Fitness Waiver Emergency Card Computer Waiver Form (s) Backround Check Consent Form Policies and Procedures EEOC / Affirmative Action Program Introductory Period (6 months) FMLA Discipline Process Harassment ADA OSHA Drug Free Workplace Policy Compensation and Benefits Travel Accident Insurance PerPost Tax Dental Flexible Spending Account Prescription Drug Card Retirement (RA & SRA) Savings Bond Short/Long Term Disability Tuition Assistance Salary Materials Employee Handbook Inclement Weather Procedure Benefits Summary Telephone Book Payroll Schedule General Information Attendance (Vacation, Personal Days, Sick Leave) Building/working hours Lunch, breaks, overtime Employee activities and events Date Date				
Emergency Card		I-9		,
Emergency Card		Application (From Interview)		
Emergency Card		Affirmative Action Form (From Inte	erview	·)
Emergency Card		Direct Deposit Form		
Computer Waiver Form (s) Backround Check Consent Form Policies and Procedures EEOC / Affirmative Action Program Introductory Period (6 months) FMLA Discipline Process Harassment ADA OSHA Drug Free Workplace Policy Compensation and Benefits EAP Pre/Post Tax Period Procest Period Fixing Account Pre/Post Tax Period Dental Pre/Post Tax Period Dental Pre/Post Tax Period Card Savings Bond Short/Long Term Disability Tuition Assistance Salary Materials Employee Handbook Benefits Summary Holiday Schedule General Information Attendance (Vacation, Personal Days, Sick Leave) Building/working hours Employee activities and events I acknowledge that I have received training and information on the items indicated above. Name Date		Fitness Waiver		
Computer Waiver Form (s) Backround Check Consent Form Policies and Procedures EEOC / Affirmative Action Program Introductory Period (6 months) FME-A Discipline Process Harassment ADA OSHA Drug Free Workplace Policy Compensation and Benefits BEAP FRENCS Dental Pre-Post Tax Dental Pre-Post Tax Pre-Post Tax Perion Drug Card Retirement (RA & SRA) Savings Bond Short/Long Term Disability Life Insurance Salary Materials Benefits Summary Holiday Schedule General Information Attendance (Vacation, Personal Days, Sick Leave) Building/working hours Benefits and events I acknowledge that I have received training and information on the items indicated above. Name Date		Emergency Card		
Policies and Procedures EEOC / Affirmative Action Program Introductory Period (6 months)		- ·		
EEOC / Affirmative Action Program Introductory Period (6 months)		Backround Check Consent Form		
Introductory Period (6 months)	Policies and	Procedures		·
Introductory Period (6 months) FMLA		EEOC / Affirmative Action Program	n	
FMLA				
Harassment		•		·
Harassment		Discipline Process		
ADA		•		
Drug Free Workplace Policy Compensation and Benefits EAP		ADA		
Compensation and Benefits EAP		OSHA		
EAP		Drug Free Workplace Policy		
EAP	Compensati	on and Benefits		
□ Dental □ Flexible Spending Account □ Vision □ Prescription Drug Card □ Retirement (RA & SRA) □ Savings Bond □ Short/Long Term Disability □ Tuition Assistance □ Life Insurance □ Salary Materials □ Employee Handbook □ Inclement Weather Procedure □ Benefits Summary □ Telephone Book □ Holiday Schedule □ Payroll Schedule General Information □ Attendance (Vacation, Personal Days, Sick Leave) □ Building/working hours □ Lunch, breaks, overtime □ Employee activities and events □ Lunch, breaks, overtime I acknowledge that I have received training and information on the items indicated above. Name Date	· —			Travel Accident Insurance
□ Vision □ Prescription Drug Card □ Retirement (RA & SRA) □ Savings Bond □ Short/Long Term Disability □ Tuition Assistance □ Life Insurance □ Salary Materials Inclement Weather Procedure Inclement Weather Procedure Telephone Book Payroll Schedule General Information Attendance (Vacation, Personal Days, Sick Leave) Building/working hours □ Lunch, breaks, overtime □ Employee activities and events □ Lunch, breaks, overtime I acknowledge that I have received training and information on the items indicated above. Name Date		Medical		
□ Vision □ Prescription Drug Card □ Retirement (RA & SRA) □ Savings Bond □ Short/Long Term Disability □ Tuition Assistance □ Life Insurance □ Salary Materials Inclement Weather Procedure Inclement Weather Procedure Telephone Book Payroll Schedule General Information Attendance (Vacation, Personal Days, Sick Leave) Building/working hours □ Lunch, breaks, overtime □ Employee activities and events □ Lunch, breaks, overtime I acknowledge that I have received training and information on the items indicated above. Name Date		Dental		Flexible Spending Account
Short/Long Term Disability		Vision		· · · ·
Short/Long Term Disability		Retirement (RA & SRA)		•
□ Life Insurance □ Salary Materials □ Employee Handbook □ Inclement Weather Procedure □ Benefits Summary □ Telephone Book □ Holiday Schedule □ Payroll Schedule General Information □ □ Attendance (Vacation, Personal Days, Sick Leave) □ □ Building/working hours □ Lunch, breaks, overtime □ Employee activities and events I acknowledge that I have received training and information on the items indicated above. Name □ Name Date		· · · · · · · · · · · · · · · · · · ·		
Materials Employee Handbook				
□ Employee Handbook □ Inclement Weather Procedure □ Benefits Summary □ Telephone Book □ Holiday Schedule □ Payroll Schedule General Information □ Attendance (Vacation, Personal Days, Sick Leave) □ Building/working hours □ Lunch, breaks, overtime □ Employee activities and events I acknowledge that I have received training and information on the items indicated above. Name □ Date □				
□ Employee Handbook □ Inclement Weather Procedure □ Benefits Summary □ Telephone Book □ Holiday Schedule □ Payroll Schedule General Information □ Attendance (Vacation, Personal Days, Sick Leave) □ Building/working hours □ Lunch, breaks, overtime □ Employee activities and events I acknowledge that I have received training and information on the items indicated above. Name □ Date □	Materials			
Benefits Summary		Employee Handbook		Inclement Weather Procedure
Holiday Schedule General Information Attendance (Vacation, Personal Days, Sick Leave) Building/working hours Employee activities and events I acknowledge that I have received training and information on the items indicated above. Name Date				
General Information Attendance (Vacation, Personal Days, Sick Leave) Building/working hours Lunch, breaks, overtime Employee activities and events I acknowledge that I have received training and information on the items indicated above. Name Date		-		
Attendance (Vacation, Personal Days, Sick Leave) Building/working hours Lunch, breaks, overtime Employee activities and events I acknowledge that I have received training and information on the items indicated above. Name Date		•		
Building/working hours Employee activities and events I acknowledge that I have received training and information on the items indicated above. Name Date	General Inf	ormation		
Building/working hours Employee activities and events I acknowledge that I have received training and information on the items indicated above. Name Date		Attendance (Vacation, Personal Da	ys, Si	ck Leave)
Employee activities and events I acknowledge that I have received training and information on the items indicated above. Name		· ·		·
Name Date		9		,
	I acknowled	ge that I have received training and in	format	tion on the items indicated above.
	Name		Dat	te
Human Resources			2041	
	Human Reso	ources		

American Institute of Physics is an Equal Opportunity Employer



ORIENTATION CHECKLIST:

Employee Name/Start Date
Return to Human Resources by:_____

Before They	ArriveConducted by the division
	Reserve time and date on calendar for orientations
	Inform co-workers with respect to new employee
Day 1Cond	ucted by the division and *Human Resources
	Welcome new employee personally
	Introduce to co-workers
	Assign a "buddy" who will assist with tour
	*Take employee to human resources to fill out appropriate forms
	Tour divisions and company (*Excluding: mailroom, cafeteria, child care center,
	reception area, restrooms, human resources, Executive Director's Office, fitness
	centerHR will conduct this part of tour)
	AFTER LUNCII
	Have "buddy" discuss other administrative procedures and systems (ordering
	supplies, health and safety, phone and computer system, etc.)
	Discuss divisions in AIP and their part in producing our products and services
Day 2Cond	fucted by the division and *Human Resources
	*Human Resources for overview of AIP benefits and policies (10:00-11:30)
	Discuss key projects, activities, and work flow of the division
	Give job description and go over responsibilities, goals, and objectives
	Review performance expectations and evaluation forms
After 2 week	sConducted by the division
	Meet with new employee
	Check understanding of responsibilities and procedures
	Check comfort level and give opportunity to ask questions
After 6 mont	thsConducted by the division and *Human Resources
	*By this time period, new employee would have had lunch with the CEO or other
	Sr. Manager where information is to be presented about AIP's history, products
	and services, and organization structure.
	Evaluate progress (6 month introductory review)
	Set objectives for improvement
	*Employee is given the "New Employee Follow-Up and Feed Back" Form
After 12 mor	nthsConducted by division and *Human Resources
	Evaluate employee performance
	Meet with employee to discuss performance and set new performance goals
	Determine growth areas and development program
Manager_	Date

New Employee Follow-up and Feed Back

How would you rate your overall orientation experience: (check one)
Excellent _ Please explain
Good
Fair
Poor
To what extent did you feel involved in the orientation process: (check one)
Deep Involved Please Explain
Interested
Slightly Interested
Not very interested
Do you have any suggestions for the orientation process?
Is there a particular area in which you would like more information or have questions?
oyee's Name Date

American Institute of Physics is an Equal Opportunity Employer Feedback.wpd-updated 3/15/2000

June 2, 2000

FIELD(Company)
FIELD(Street Address)
FIELD(City, State, Zip)
FIELD(Name)

Dear FIELD(Salutation):

American Institute of Physics is an equal opportunity and affirmative action employer which does not discriminate on the basis of race, national origin, religion, age, color, sex, disability, or veteran's status, or any other characteristic protected by local, state or federal laws, rules or regulations. The institute's policy applies to all terms and conditions of employment. To achieve our goal of equal opportunity, the institute maintains an affirmative action plan through which it makes good faith efforts to recruit, hire and advance in employment qualified minorities, females, disabled individuals and Vietnam era and special disabled veterans. We would appreciate FILED(Company) assistance in the Institute's effort to achieve its affirmative action and equal opportunity goals.

Therefore, we request that FIELD(Company) refer qualified minorities and females for available positions at the American Institute of Physics.

Thank you for your attention. If you have any questions, do not hesitate to call.

Yours truly,

Sandra James

Recruitment

#302

Page # 1 of 5

Background

and Policy:

All recruitment for new or open positions at the Institute is coordinated by Human

Resources.

Authority:

Approved:

Management Committee

Date: 5/97

Procedure:

Managers wishing to create a new position or to hire, promote or transfer to fill a vacancy

must first contact Human Resources.

Prepare a job description; if the position is a new one, this job description must be 1.

evaluated in HR to determine appropriate salary grade.

2. Complete a Request for Personnel Form (copy attached). Approval is required for all

positions.

3. Hiring manager will work with HR staff in posting, advertising and interviewing to fill

approved positions. Recruiting department pays for cost of recruitment (job ad, travel

expense for out-of-area candidates, placement agency or employee referral fee, etc.)

Human Resources staff handle the scheduling of interviews, and all candidates interviewed 4.

> must complete an Application for Employment. An Interview Evaluation should be completed for each candidate interviewed; once hiring manager has made a decision,

reference checks must be conducted and an Employment Offer Form must be completed

and signed by two levels of management.

5. Job offer will be handled by Human Resources staff.

Reference:

Job Posting policy

Attachment:

Position Approval Form

Personnel Change Form

Employment Offer Form

Telephone Reference Check

D01605

#319.02

Page #1 of 1

Background and Policy:

AIP recognizes that its staff members possess valuable knowledge and skills and, therefore, encourages staff members to apply for open positions at the Institute. To offer opportunities for internal career growth and advancement, notifications of vacant positions will be posted on bulletin boards at all locations, and, whenever possible, positions will be filled with internal candidates. Positions will be posted for five consecutive business days before being offered to an outside candidate.

Authority:

Approved:

Management Committee

Date: 5/97

Procedure:

(

1. Human Resources, having received notification of necessary approval to fill a vacant position, will post a notice of the open position, providing the following information:

Position Title and Status (exempt or non-exempt)
Location and Supervisor
Basic job functions and specific qualifications
Method of applying for position and date of posting

- 2. Individuals interested in applying should contact Human Resources; while their initial inquiry will be confidential, employees must notify their current supervisor prior to being interviewed for another position in the Institute.
- 3. Every consideration will be given to internal candidates for vacant positions; qualified candidates will be interviewed and all applicants will receive feedback on their status.

D01606

Page # 2 of 5

AMERICAN INSTITUTE OF PHYSICS Position Approval Form

Position Title:				Date:		
Division:			Section	·		
☐ Exempt	□Non-Exempt					
Salary Grade:	Salary Ra	nge: \$		or \$	per hour	
Location:	□ Melville	□ College Park	c □ other			
If this is a gran	nt-funded position, w	hat is the name of th	e grant?			
	[Note: all positio	ns require Manager	ment Committee	approval]		
NEW HIRE	(Please check all a	ppropriate boxes)				
□ Regular posi □ Hourly posi □ Cottage Indu	tion 🗆 Independ	ary position (for wha dent Contractor (que esources for review)	stionnaire must be) completed and submitte	d to Human	
Is this a replac	ement? Na	ame of employee to b	oe replaced:			
s this a budge	eted position?	Budget author	ization dates:			
Is this an unbu	idgeted position?					
Comments						
APPROVAL	<u>S:</u>					
Approval gran	nted to post, recruit a	nd hire for this posit	ion.			
Hiring Manag	er	Date	Officer	Date		
Director		Date	T. C. Braun, Di	r., Human Resources	Date	
	Т	O BE COMPLETED B	Y HUMAN RESOUR	RCES DEPARTMENT		
Name of New Er	nployee:			Date Employed:		
Starting Salary:_		Grade:		Job Title:		
REMINDER TO N	Maryland H.R. staff	: Forward copy of si	GNED FORM TO M. (Griesmer		

#302 page #3 of 5

AMERICAN INSTITUTE OF PHYSICS PERSONNEL CHANGE FORM

DATE					
EMPLOYEE N	NAME		JOB TITLE		,
DIVISION					
LOCATION	□ Melville □ Maryland	d □ Other	EFFECTIVE I	DATE	
ACTION REC	QUESTED	FRO	<u>om</u>	<u>TO</u>	
SALARY CHA	ANGE				
TITLE CHAN	GE				
JOB GRADE	CHANGE				
DIVISION CH	ANGE	-		***************************************	
SECTION CH	ANGE		***************************************		
COST CENTE	ER CHANGE			•	
SHIFT CHAN	GE			-	
OTHER					
Was this a tra	nsfer to a budgeted posi	tion? □Yes	s □ No		
Name of empl	oyee to be replaced:				
EXPLANATIO	ON FOR THE CHANGE_				
·		***************************************			
APPROVALS	<u>S:</u>				
Hiring Manage	er Date		Office	टा	Date
Director	-	Date	T.C. Bi	aun, Dir., HR	Date
j:empstat.wpd-Septe	mber 15, 2000				

AMERICAN INSTITUTE OF PHYSICS

Employment Offer Form

Name of App	olicant:			
Position Title	e:	·	Reports to:	
Salary Grade		FI	LSA [check one] Exempt	☐ Non-Exempt
Salary Range	e [min]	[mid]	[max]	
Proposed Sta	arting Salary: (specia	al approval is need	ded for offers above the mid	point):
Proposed Sta	arting Date:		-	
IMPORTAI	NT:			
before a hiri		If you have done	the reference checks, please	ference checks on a candidate use the Telephone Reference
	Reference check	(please attach co	ompleted Telephone Referen	ce Check)
Proposed off done.	fer must be reviewed	I with Human Res	sources. Please check below	to indicate that this has been
Q	Human Resourc	es Review		
	be considered offici ning this form to Hu		els of approval. Please sign a	nd obtain necessary approvals
SIGNATU	RES:			
	[Hiring Manage	:t]		Date
	[Hiring Manage	er's Supervisor]		Date
	appropriately complet Checks you may have	_		Employment Application, any
12/94				
			•	D01609
For Manage	rs and Supervisors On	ly		09/14/00

#302

Page #5 of 5

AMERICAN INSTITUTE OF PHYSICS TELEPHONE REFERENCE CHECK

Applicant's N	ame	Date:		
Company Nar	ne:	Phone Number:		
Dates of Emp	loyment:			
Position Held				
Duties:				
Reason for Le	aving:			
Employee's	O			
	Quality of work			
	Ability to learn			
	Attendance			
Ability to get	along with others:			
Were there an	y personal problems which affec	et employee's work?		
If yes, please	explain:			
		Salary		
Would you re	hire?	If not, why?		
Information r	eceived from	Title		
Information r	eceived at AIP by			
		Signature	Date	



June 1999

TO:

All Employees of AIP

FROM:

T. C. Braun ICB

SUBJECT:

REVISED EMPLOYEE HANDBOOK

Attached is the revised *Employee Handbook*. Please insert into your *Employee Handbook* looseleaf and discard the old. When you have familiarized yourself with AIP's overall policies and practices, please sign and date the receipt of Employee Handbook on page 39 and return to Human Resources.

Please feel free to call Human Resources if you have any questions.

Employee Handbook



Revised June 1999

AMERICAN INSTITUTE OF PHYSICS LOCATIONS

One Physics Ellipse College Park, Maryland 20740-3843 Tel: 301-209-3100 • Fax: 301-209-0843

ACP Child Care Center ACP Technology User Support Accounting Career Services Chairman of the Board Controller's Office Development Office Director, Human Resources Director, Physics Programs Education Education & Employment

Statistics

Executive Director/CEO Facility Services Human Resources Physics History Physics Today **Public Information** Secretary The Industrial Physicist Society of Physics Students/ $\Sigma\Pi\Sigma$ Treasurer/Chief Financial & Administrative Officer

Suite 1NO1 2 Huntington Quadrangle Melville, New York 11747-4502 Tel: 516-576-2200 • Fax: 516-349-7669

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Physics Today

MEMBER SOCIETIES

The American Physical Society
Optical Society of America
Acoustical Society of America
The Society of Rheology
American Association of Physics Teachers
American Crystallographic Association
American Astronomical Society
American Association of Physicists in Medicine
American Vacuum Society
American Geophysical Union

OTHER MEMBER ORGANIZATIONS

Sigma Pi Sigma Physics Honor Society Society of Physics Students Corporate Associates

TO AIP STAFF MEMBERS

Our organization, the American Institute of Physics provides a wide variety of services for science societies, the physics community, students and the general public, as well as for over 100,000 people who comprise AIP's ten Member Societies.

AIP is one of the world's largest publishers of physics research literature. We publish our own magazines and archi-



val journals. We also assist Member Societies and other organizations in the production and distribution of their journals. We also publish Conference Proceedings.

All our journals are available on-line as well as in print. We offer on-line services to other publishers and have about 40 journals from about 10 publishers on our On-line Journal Publication System.

Through its physics programs, AIP contributes to public awareness and education. Among AIP's contributions are education programs including the Society of Physics Students, the Center for History of Physics including the Niels Bohr Library, a Corporate Associates Program, and divisions for Public Information, Statistics (on physics education and employment), and Career Services. In these and many other ways, AIP reaches out to serve the community of physicists and the public at large.

As an AIP staff member you are advancing, directly or indirectly, the important goals of the Institute; your chosen career is one of service to science and society.

This booklet provides you with an introduction to AIP and its personnel policies and benefits. Keep it handy for future reference. Whenever you need more information or an answer to a question that does not appear in this *Handbook*, please consult your supervisor or a member of Human Resources.

continued on next page

One of my pleasures as AIP's Executive Director is working with fellow employees and exchanging ideas on how the organization can function better. Communication is the key to improved performance and greater job satisfaction, so please feel free to contact me with your suggestions.

Marc H. Brodsky Executive Director/CEO June 1999

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VICE PRESIDENT, PUBLISHING DARLENE A. WALTERS



Business Systems & Operations Marketing Journals & Technical Publications Publishing Services Publishing Systems

DIRECTOR, PHYSICS PROGRAMS JAMES H. STITH

Advertising & Exhibits
Career Services
Computing in Science
& Engineering
Education
Education & Employment
Statistics
Physics History
Physics Today
Public Information
The Industrial Physicist



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TREASURER/CHIEF FINANCIAL & ADMINISTRATIVE OFFICER RICHARD BACCANTE



Accounting Facility Services Treasury

SECRETARY BENJAMIN B. SNAVELY



νi

DIRECTOR, HUMAN RESOURCES THERESA C. BRAUN



Benefits
Child Care Centers
Compensation
Employee Relations
HRIS
Labor Relations
Recruitment
Training

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About This Handbook

We want your job experience to be rewarding and enjoyable and we believe the more you know about the Institute, the more satisfaction you can derive from your job.

With this in mind, we have prepared this *Employee Handbook* to help you become acquainted with the Institute, its personnel policies, and the benefits offered to you as an employee. Please review the *Handbook* carefully and keep it for future use.

Due to government regulations and the changing demands of our operations, we may modify these policies and benefits from time to time. This *Handbook* contains guidelines for the Institute's use. Its terms should not be regarded as contractual in nature. We will attempt to keep you up to date regarding changes that affect you.

AIP History and Organization

The American Institute of Physics (AIP) is a not-for-profit membership corporation chartered in New York State in 1931 for the purpose of promoting the advancement and diffusion of the knowledge of physics and its application to human welfare. Its governance is provided by Member Societies. Currently there are ten Member Societies.

It is the mission of the Institute to serve the sciences of physics and astronomy by serving the Societies, by serving individual scientists, and by serving students and the general public.

Today, the Institute has a staff of nearly 560 people handling its various services for more than 120,000 members of ten Member Societies. In addition, 5,700 students in approximately 700 colleges and universities are members of the Institute's Society of Physics Students. The physics honor society, Sigma Pi Sigma, has 34,000 active members. The Institute is represented by 55 Corporate Associate members.

At the end of 1993, the Publishing Center was consolidated on Long Island, NY, while Physics Programs and Finance and Administration moved to the American Center for Physics (ACP) in College Park, MD.

The American Center for Physics opened in October 1993 in a new 120,000 square foot building on 24 acres of land in College Park, MD. ACP provides headquarters for the American Institute of Physics, The American Physical Society (APS), the American Association of Physics Teachers (AAPT), and the American Association of Physicists in Medicine (AAPM).

The major ongoing goals of the AIP staff are described under the following headings:

Umbrella Pricing Image Timeliness

AIP Activities and Programs

The Institute provides publishing and other services for ten Member Societies, collects dues, provides financial services, handles subscription fulfillment for 80 publications, mails ballots and announcements, and prepares membership directories. It also publishes its own journals, conference proceedings, special reports, as well as translates and publishes Russian journals.

The Institute is best known for its extensive publishing operation. A large fraction of the world's physics research literature is published by AIP and its Member Societies. By adopting appropriate up-to-date publishing techniques, the Institute ensures that current physics and astronomy research papers are widely distributed promptly and economically. In addition to publishing original papers, AIP prepares and distributes various current physics information products to assist scientists in finding and retrieving the research contributions relevant to their work.

AIP's flagship monthly magazine, *Physics Today*, goes to 125,000 subscribers, including many overseas. A bi-monthly magazine, *Computing in Science and Engineering*, jointly published by AIP and the IEEE Computer Society, reports on significant developments in computer software, hardware, and methodology for physics research and education. *The Industrial Physicist* is a bi-monthly magazine with a circulation of 60,000 that helps physicists in industry and their managers to make more effective use of physics in furthering corporate goals.

The Public Information Division is in charge of news media relations and government relations. It provides the media with information concerning developments in physics and astronomy. It operates press rooms at society meetings, provides science news reports for TV and radio programs, and prepares special news releases. It tracks development in science policy debates and works with Member Societies in coordinating efforts and distributing this information.

The Institute assists those interested in a physics education and related career options through a range of programs and services run by its Education Division. The Society of Physics Students and Sigma Pi Sigma, the physics honor society, are part of this division.

The Career Services Division offers a variety of employment and career resources, while the Education and Employment Statistics Division carries out statistical studies.

The Center for History of Physics includes the Niels Bohr Library. It promotes the preservation of historical source materials for physics and allied fields, and offers aids to scholars, educators, and the media, including its own World Wide Web exhibits.

The Institute maintains a liaison with industry, through the AIP Corporate Associates' activities and with other outside scientific and publishing organizations.

Equal Opportunity in Employment

The Institute is an equal opportunity employer. We believe that every employee has the right to be treated with dignity and respect. Consequently, we will not discriminate on the basis of age, race, creed, color, sex, national origin, citizenship, disability, marital status, or any other protected characteristic. Our management team is dedicated to ensuring full compliance of this policy with respect to recruitment, advertising, hiring, placement, promotion, rates of pay or other forms of compensation, selection for training, layoffs, termination, and general treatment during employment.

All individuals have unique abilities. We are committed to employing applicants and employees on the basis of ability, rather than disability. This commitment includes making reasonable accommodations for known physical or mental limitations of otherwise qualified individuals with disabilities. A reasonable accommodation is a modification or adjustment to a job, the work environment or the way things usually are done that does not pose an undue hardship to the Institute.

Immigration Reform and Control Act

In accordance with the Immigration Reform and Control Act of 1986, it is the Institute's policy to hire only those individuals who are authorized to work in the United States. Pursuant to this law, all individuals who are offered employment will be required to submit proof of their identity and employment eligibility. Employees will also be required to complete and sign, under oath, Immigration and Naturalization Service Form I-9. Form I-9 requires you to attest that you are authorized to work and the documents submitted are genuine.

If you are authorized to work in this country for a limited period of time, you will be required to submit proof of your employment authorization and sign another Form I-9 before the expiration of that period in order to remain employed by the Institute.

Questions, Suggestions, and Complaints

The best way to develop a rewarding and enjoyable work environment is through open, honest, and direct communication about all aspects of our jobs. There are times when each of us has a question, comment, or problem that needs to be addressed. The AIP policy is simple: ask it, suggest it, or let us know about it.

The Institute encourages you to bring your questions, suggestions, and complaints to management's attention. Everyone will receive careful consideration and a timely response. When many people work together, situations may be viewed differently. While no one can guarantee that you will always receive the answer you want, we will attempt to provide fair consideration to any question, suggestion, or complaint that may arise.

When you have a problem or a question, you should discuss the situation with your supervisor. You and your supervisor work together on a daily basis and our experience has shown that many problems can be effectively resolved at this level. We encourage you to speak openly and honestly with your supervisor.

If you still feel that your problem has not been dealt with fully, or if for some reason you feel uncomfortable discussing the matter with your supervisor, discuss your concern with your Director or Division Manager, then, if necessary, the Director, Human Resources or her designee. The officers of the Institute, including the Executive Director, maintain an open-door policy. They are glad to hear from employees with special suggestions or concerns.

As you can see, we are anxious to hear from you on any subject and look forward to working with you to address your concerns. We want you to have every opportunity to discuss your problems freely.

You and Your Supervisor

Your supervisor is a vital part of our management team and will have more to do with your welfare and development than any other person in our organization. Your supervisor is directly involved in planning work schedules, ensuring the quality of your work, and providing you with whatever assistance you may need. Furthermore, your supervisor will explain your new job responsibilities, introduce you to your fellow employees, show you where things are, and periodically evaluate and advise you concerning your work performance.

An important aspect of a supervisor's duties is to listen to questions, suggestions, and problems and to provide an appropriate, effective response. He/she is there not only to supervise, but to make your thoughts and concerns known to upper management. We all benefit when you fully cooperate with your supervisor and discuss issues openly with him or her.

Your Introductory Period of Employment

It usually takes a period of time for new employees to get to know a new work environment and the people with whom they will be working. Similarly, an employer needs time to get acquainted with new employees and to find out how well they fit into the job for which they were hired. At AIP, this time is called an "introductory period."

The first six consecutive months of employment are considered to be an introductory period. Employee performance will be evaluated during this period to determine if employment should be continued.

At all time during your employment at AIP, including during the Introductory Period, your employment is at-will. This means that the employment relationship may be terminated by either the employee or the Institute for any reason and without prior notice.

Full-Time and Part-Time Employees

Currently regular full-time employees work 35 hours per week in New York, and 37.5 hours per week in Maryland, and receive full benefits. These hours are subject to change according to business needs.

Regular part-time employees work at least 25 hours per week and receive full benefits.

Hourly employees will usually work less than 25 hours per week at an AIP location.

Temporary employees are hired as needed on an irregular basis.

Cottage employees work at home and must fulfill, at a minimum, the hourly obligations agreed to upon employment.

Throughout the *Employee Handbook* the term "regular employee" will be used to denote only regular full-time and part-time employees.

Your Normal Work Week

The normal work week for (full-time) employees is 35 hours (in New York) and 37.5 hours (in Maryland), Monday through Friday.

New York:

There are two shifts: a day shift from 8:45 a.m. to 4:15 p.m., with one-half hour for lunch and an evening shift from 5:00 to 11:00 p.m.

Maryland:

The normal work day is from 8:30 a.m. to 5:00 p.m., with one hour for lunch.

Maryland employees may work flexible hours, within the following guidelines. All regular, full-time employees must work during the core hours of 9:00 a.m.-4:00 p.m., taking either a half-hour or an hour for lunch. In addition, at least one senior staff member must be present in each department during regular business hours (8:30 a.m.-5:00 p.m.), and telephones must be continuously covered. All flex time must be approved by the division manager.

Business conditions and other factors may require that adjustments be made to these schedules from time to time. Also, the working hours of individual employees may need to be changed to address special business needs. The Institute reserves the right to change the normal business hours and length of the work week. However, in either of these circumstances, every effort will be made to provide employees with advance notice of changes in daily/weekly work schedules.

Attendance and Punctuality

You were hired to perform important functions as part of our team. As with any group effort, cooperation and commitment from each individual are required if the Institute is to operate effectively. Therefore, regular attendance and punctuality are expected of all employees at AIP; it is your responsibility to AIP, to your fellow employees, and to yourself

We recognize that there may be times when your absence or lateness cannot be avoided, due to illness or another legitimate reason. In such cases, you are expected to telephone your supervisor before the start of your shift. You should call in every day that you are away from your job. An employee returning from an absence of five days or more will be required to provide a doctor's note. Unreported absence may subject an employee to disciplinary action, up to and including termination. Two consecutive days of unreported absence will be regarded as a voluntary resignation.

Consistent and/or a pattern of unexcused absenteeism or unexcused lateness cannot be tolerated because of the negative effect on the Institute, the employee's performance, and that of his or her co-workers.

Attendance Incentives

All regular employees with a record of no sick leave for the year will receive two bonus days and a cash incentive bonus of \$200. Absences covered under the guidelines of the Family & Medical Leave Act (FMLA) will not be included in determining attendance incentives. This paid time off must be taken within the next year.

AIP will award a cash incentive bonus of \$200 to each regular employee with no more than two sick days during the calendar year (1 January through 31 December). New employees will be eligible for this cash incentive only for a full calendar year of employment.

Sick Leave

AIP will compensate all regular employees after three continuous months of employment for time lost due to personal illness or injury, or for the illness or injury of a child or other (live-in) dependent up to a maximum of ten days per calendar year. Sick leave may also be used for medical/dental appointments or laboratory tests (either for self or for a dependent).

You are expected to notify your supervisor as early in the day as possible on the first day of sick leave and every day thereafter that you are away from your job. Absences due to illness exceeding five days will require a doctor's certification that you are fully able to return to work.

Employees terminating employment for any reason are not entitled to payment for any accrued unused sick time.

Sick Leave Accrual (Sick Bank)

For all regular employees, on the first day of each year, unused sick days from the preceding year will be credited to a sick leave accrual account.

Any unused vacation leave in excess of 30 days will also be converted to sick leave and credited to the sick leave accrual account on the first day of each year (see Vacations).

Accrued sick leave may be used for employee illnesses or injuries resulting in absences of eight or more consecutive work days (i.e., disability leave or for the birth of a child) or dependent illnesses covered under the guidelines of FMLA. In addition, this accrued sick leave may be used only after all 10 sick days have been exhausted in that calendar year. See Human Resources for details.

If you request leave because of a birth, adoption or foster care placement of a child, or to care for a covered relation with a serious health condition, you must use your 10 sick days before using your sick accrual account. (See Family & Medical Leave Policy for eligibility and guidelines.)

Employees terminating employment for any reason are not entitled to payment for any unused sick leave accrual account.

Paid Holidays

All regular employees are granted twelve paid holidays which may include one or more personal days (see Personal Days). The holidays are:

New Year's Day
Martin Luther King, Jr. Day
Presidents' Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Day After Thanksgiving
Christmas Day

Depending on the days of the week Christmas and New Year's are celebrated, two additional holidays may be added during this period.

In order to be eligible to receive holiday pay, you are required to work your regularly scheduled hours the workday preceding and the workday following the holiday. In accordance with the Institute's policy, an approved vacation day or any other excused and paid day off is considered a day worked for purposes of holiday pay eligibility.

In-house and temporary employees are eligible for paid holidays when they have been consecutively employed for at least one month, <u>and</u> the holiday falls within their regularly-scheduled work hours.

The holiday schedule for the following year is announced in the fall. Holidays occurring during an employee's vacation are not charged against vacation time.

Personal Days

Depending on the number of official holidays in a calendar year, one or more additional personal days are given to complete the 12-day total. (This is shown on the holiday schedule distributed each Fall.)

Personal days must be requested at least two days in advance, from your supervisor. Personal day requests that cannot be accommodated will be rescheduled to a mutually agreeable time. No personal days may be carried over into the following calendar year.

As a new employee, you are eligible for a personal day after three months of employment. In a year with two personal days on the holiday schedule, new employees hired between 1 January and 30 June are eligible for both days; those hired between 1 July and 15 September are eligible for one day, subject to the three-month waiting period mentioned above.

Employees terminating employment for any reason are not entitled to payment for any unused personal time.

Vacations

Vacation time is provided to employees by AIP in recognition of the importance of uninterrupted periods of rest, relaxation, and time with family members. Accordingly, vacation time is to be used for vacation. It may not be "cashed in" by working during a vacation period. A maximum of 30 days may be carried over from one year to the next. At the beginning of each year, all unused vacation days in excess of 30 will be credited to your sick leave accrual account (see Sick Leave Accrual), except as described under "Exceptions," on page 15.

Regular employees who have worked at AIP for at least six full months qualify for paid vacation on the following basis.

Length of Service

- Within the first year of employment at AIP
- First anniversary through fifth anniversary (2nd, 3rd, 4th, 5th years of employment)
- Sixth year of employment and each year thereafter

One day of vacation per month

One and one-quarter days of vacation for each month employed (15 vacation days for a full 12-month year worked)

One and two-thirds days of vacation for each full month employed (20 vacation days for a full 12-month year worked)

Because work schedules vary, one day of vacation is defined as 1/5 of your regular weekly work schedule.

Hourly in-house employees who consistently work a minimum of 15 hours per week and have worked at AIP for at least one year qualify for paid vacation on the following basis:

 First anniversary through second anniversary (2nd year of employment)

One half day of vacation for each month employed (6 vacation days for a full 12-month year worked)

 Third year of employment and each year thereafter

One day of vacation for each month employed (12 vacation days for a full 12-month year worked)

Additional vacation days are awarded in recognition of special employee service anniversaries, as follows:

 Upon completion of 15 years of service 	Five day
 Upon completion of 20 years of service 	10 days
• Upon completion of 25 years of service	10 days
• Upon completion of 30 years of service	10.days

Exceptions

Following the 15th and up to the 20th year of service, you may carry over 35 days of vacation. Following the 20th year of service, you may carry over 40 days of vacation.

Vacation schedules must be approved by the appropriate supervisor prior to any vacation. Supervisors are to consider schedules and business conditions for the requested vacation period and the length of service of the requesting employee.

Employees terminating employment for any reason are entitled to payment for all unused vacation time accrued.

Service Awards

In recognition of the value of its employees, AIP offers service anniversary awards at the following times: 5, 10, 15, 20, 25, 30, 35, and 40 years of service. 5 and 10 year awards are given at the annual holiday party. 15 year awards are given at the annual 15-year Club Luncheon.

Overtime

Employees are expected to work overtime when requested to do so by their supervisors. Overtime work is not permitted except when specifically authorized.

Overtime work by non-exempt employees will be paid at the regular rate for all hours up to 40 per week and at one and one-half times the regular rate of pay for all hours worked in excess of 40 per week. Every effort will be made to provide advance notice when overtime work is required.

Your Paycheck

All employees are paid bi-weekly.

When a payday falls on a holiday, payroll checks will be distributed on the preceding working day.

Your paycheck includes all earnings including any overtime that is submitted by the payroll deadline. Year-to-date earnings are itemized on the check.

If you are absent on payday, your paycheck will be held in Human Resources.

Forms required for Direct Deposit are available in Human Resources.

Personnel Records

Human Resources maintains appropriate records concerning your employment at AIP. It is important that you provide Human Resources with current information to update your personnel records, particularly in case of emergency and to ensure receipt of benefits.

Employees should immediately notify their supervisor or Human Resources of any changes in:

Name
Address
Telephone Number
Marital Status
Number of Dependents
(For W-4 use and benefit enrollment)
Emergency Information
Beneficiary(ies) for insurance purposes
Dependent(s) reaching the age of 23

Performance Reviews

Our policy is to pay competitive wages in order to attract and retain quality employees. In addition, AIP periodically evaluates the performance of each employee. The Institute normally reviews employees' performance annually. All new hires will receive a performance review at the end of their six-month introductory period.

Performance is rewarded based on merit. Our performance evaluation program gives you an opportunity to sit down with your supervisor to review how your work has progressed since your last review. During this evaluation mutual goals for the future are discussed, as are steps that may be necessary to reach those goals.

While we have established a schedule for performance evaluation, this schedule is not intended to limit discussions of performance, goals, and/or objectives to those times. We urge you, as we urge our supervisors, to discuss any questions or problems related to your performance on an ongoing basis. We hope this type of communication will enhance your performance and ensure our mutual success.

Staff Development and Advancement

We believe that employees should have the opportunity to increase their knowledge and skills, to improve current performance and (when qualified) assume new responsibilities. Therefore, you are encouraged to improve your knowledge and skills in order to become qualified for more responsible positions. We assist you, where appropriate, in the achievement of your personal goals with training programs and the Tuition Assistance Plan.

Because of the training required for most positions at AIP, a regular employee may not apply for a position in another division before completing one year in your present position.

Advancement at AIP is based on merit (e.g., consistently good performance and reliability; necessary knowledge and skills; and demonstrated ability to accept increased responsibilities). The Institute will attempt to promote employees wherever possible to fill openings at higher levels of responsibility. Job openings at AIP are posted on bulletin boards at all locations, and qualified staff are encouraged to apply.

In selecting applicants for available positions, consideration will be given to performance reviews, background and educational qualifications, length of service, and supervisor's recommendations.

Pat on the Back

A manager may, with approval from his or her Director or Officer, award a monetary "Pat on the Back" (\$100 cash) to an employee deemed to have made a significant extra effort or contribution to the department of the Institute. All "Pat on the Back" recommendations are made in writing and must be approved by the Director, Human Resources.

Tuition Assistance Plan

Upon approval, the Institute will pay up to 100% of the tuition and registration fees, and up to \$500 for course-related books at the time of enrollment, for courses taken by eligible employees. To be eligible, you must have worked for AIP for at least six months as a regular employee. You must obtain a grade of "C" or better to receive 75% reimbursement or a grade of "B" or better to receive 100% reimbursement (job-related courses only). There is a maximum of \$3,500 per school year.

To be eligible as an hourly or cottage industry employee, you must have worked for AIP continuously and consistently for one year and obtain a grade of "C" or better to receive 50% reimbursement. There is a maximum of \$500 per school year (from September through August).

Approved courses include those that are pertinent to your work, that lead towards a degree at an accredited school, or that are taken to fulfill matriculation requirements.

Forms and further information can be obtained from Human Resources.

Employee Assistance Program

AIP's Employee Assistance Program (EAP) provides a highly confidential and experienced source of help for employees who are experiencing human problems such as finding sources of elder care or child care, legal or financial difficulties, substance abuse, or other personal/family situations. In most instances problems of a personal nature can be resolved without the services of the EAP. Sometimes, however, this is not the case. Under such conditions, it may be in the best interest of all employees, family members, and the Institute to seek outside assistance.

The Institute has retained the services of Corporate Counseling Associates. One of the most important reasons for selecting an outside firm is to ensure confidentiality.

Employee Benefits Program

AIP provides an excellent, comprehensive employee benefits package to all eligible employees.

The Institute may, in its discretion, amend, modify, or discontinue the benefits should it become desirable or necessary. Each fall the Institute reviews its benefits programs, looking at utilization, enrollment, and costs. Any change in coverage or cost will be communicated to employees during the Open Enrollment Period in November. Included among the coverages in our insurance benefit program are: medical, dental, vision, life insurance, travel and accident insurance, prescription drug, retirement, and short-term and long-term disability insurance. All regular employees are eligible for enrollment in these group plans on the first day of the month after completion of three months of continuous employment.

Domestic Partner Health Insurance Coverage

The Institute offers medical and dental/vision coverage through its insurance carriers to same sex domestic partners of its active employees. The domestic partner is responsible for the full premium cost of the insurance plan. In addition, these benefits are extended to the children of the domestic partner. Domestic partners are included in the following policies: bereavement leave, sick leave, and "Family/Medical Leave."

Domestic partners will be defined as two adults of the same sex who are not related by blood, who have lived together continuously for at least one year and plan to do so indefinitely, are mutually responsible for their common welfare, reside at the same address, and maintain no other domestic partnership or marriage.

Full descriptions of each of the above-mentioned coverages are provided in separate benefit booklets and the policy certificates. The benefit booklets, summarizing each provided benefit, are distributed to all new employees by Human Resources. Questions concerning eligibility, enrollment, coverage, and claims should also be directed to Human Resources.

Employee Referral

Any regular employee who refers an applicant who is employed by the Institute for six continuous months will receive the following referral fees:

Regular full-time position: \$400.00 Regular part-time position: \$200.00

Cottage industry & hourly positions: \$150.00

This bonus will be paid following the applicant's successful completion of the six-month introductory period provided the referring employee is still employed at AIP.

If the new employee completes a year of continuous employment and is in a regular full-time position in exempt grade 7 or above, the referring employee will receive an additional \$400.00.

Employment of Relatives

Having members of the same family employed by the Institute can be a positive factor adding to the strength of the staff and is encouraged except as set forth below.

- 1. No relatives may be employed in the same section.
- 2. No relatives may be employed in positions such that one has supervision, directly or indirectly, over the other, or has any influence or appearance of influence over the other's employment, promotion, salary, or other related management or personnel actions.

Jury/Witness Duty

Jury duty is a civic responsibility. All employees who are required to serve on a jury on a scheduled work day will receive their regular pay from AIP for hours they are not able to work because of the time served on jury duty. They must present the court summons to Human Resources. If hours of work do not conflict with jury service, the employee is expected to report for regular work hours.

In instances where the locality pays a per diem stipend, employees keep only the amount designated for transportation and return the balance to AIP.

Bereavement Leave

Regular employees are eligible for paid bereavement leave for up to three working days (for long-distance travel an extra day will be granted) in the event of a death in an employee's immediate family and one day for all other family members.

Immediate family for the purpose of this policy shall be defined as spouse, children, parents, grandparents, grand-children, sisters, brothers, parents-in-law, and domestic partners (see page 22 for definition of domestic partner). Where a question arises, appropriate documentation must be submitted to the employee's supervisor to receive pay for bereavement leave.

Family and Medical Leave Policy

The Leave Policy

You are eligible to take up to 12 weeks of unpaid family/ medical leave within any 12 month period and be restored to the same or an equivalent position upon your return from leave provided you: (1) have worked for the Institute for at least 12 months, and for at least 1250 hours in the last 12 months; and (2) are employed at a worksite that has 50 or more employees within 75 miles of each location.

Reasons For Leave

You may take family/medical leave for any of the following reasons: (1) the birth of a son or daughter and in order to care for such son or daughter; (2) the placement of a son or daughter with you for adoption or foster care and in order to care for the newly placed son or daughter; (3) to care for a spouse, son, daughter (child must be under 18 years of age), or parent ("covered relation") with a serious health condition; (4) same sex domestic partners and their children; or (5) because of your own serious health condition which renders you unable to perform an essential function of your position. Leave because of reasons "1" or "2" must be completed within the 12 month period beginning on the date of birth or placement. In addition, spouses employed by the Institute who request leave because of reasons "1" or "2" or to care for an employee's parent or child with a serious health condition may only take a combined total of 12-weeks' leave during any 12-month period.

Notice Of Leave

If your need for family/medical leave is foreseeable, you must give the Institute at least 30 days prior written notice. If this is not possible, you must at least give notice as soon as practicable (within 1 to 2 business days of learning of your need for leave). Failure to provide such notice may be grounds for delay of leave. Additionally, if you are planning a medical treatment you must consult with the Institute first regarding the dates of such treatment. Where the need for leave is not foreseeable, you are expected to notify the Institute within 1 to 2 business days of learning of your need for

leave, except in extraordinary circumstances. The Institute has Request for Family/Medical Leave forms available from Human Resources. You should use these forms when requesting leave.

Medical Certification

If you are requesting leave because of your own or a covered relation's serious health condition, you and the relevant health care provider must supply appropriate medical certification. You may obtain Medical Certification forms from Human Resources. When you request leave, the Institute will notify you of the requirement for medical certification and when it is due (at least 15 days after you request leave). If you provide at least 30-days' notice of medical leave, you should also provide the medical certification before leave begins. Failure to provide requested medical certification in a timely manner may result in denial of leave until it is provided.

The Institute, at its expense, may require an examination by a second health care provider designated by the Institute, if it reasonably doubts the medical certification you initially provide. If the second health care provider's opinion conflicts with the original medical certification, the Institute, at its expense, may require a third, mutually agreeable, health care provider to conduct an examination and provide a final and binding opinion. The Institute may require subsequent medical recertification. Failure to provide requested certification within 15 days, if such is practicable, may result in delay of further leave until it is provided.

Reporting While On Leave

If you take leave because of your own serious health condition or to care for a covered relation, you must contact the Institute on the first and third Tuesday of each month regarding the status of the condition and your intention to return to work. In addition, you must give notice as soon as practicable (within 2 business days if feasible) if the dates of leave change or are extended or initially were unknown.

Leave Is Unpaid

Family/medical leave is unpaid leave (although you may be eligible for short-term disability payments and/or workers' compensation benefits under those insurance plans which are mentioned elsewhere in the *Handbook*). If you request leave because of your own serious health condition, sick leave will first be substituted for any unpaid family/medical leave. The substitution of paid leave time for unpaid leave time does not extend the 12-week leave period. Further, in no case can the substitution of paid leave time for unpaid leave time result in your receipt of more than 100% of your salary.

Medical and Other Benefits

During an approved family/medical leave, the Institute will maintain your health benefits as if you continued to be actively employed. If your leave is unpaid, you must pay your portion of the premium. Your health care coverage will cease if your premium payment is more than 45 days late. If your payment is more than 30 days late, we will send you a letter to this effect. If we do not receive your co-payment within 15 days of this letter, your coverage will cease. If you elect not to return to work for at least 30 calendar days at the end of the leave period, you will be required to reimburse the Institute for the cost of the health benefit premiums paid by the Institute for maintaining coverage during your unpaid leave, unless you cannot return to work because of a serious health condition or other circumstances beyond your control.

Intermittent and Reduced Schedule Leave

Leave because of a serious health condition may be taken intermittently (in separate blocks of time due to a single health condition) or on a reduced leave schedule (reducing the usual number of hours you work per workweek or workday) if medically necessary. If leave is unpaid, the Institute will reduce your salary based on the amount of time actually worked. In addition, while you are on an intermittent or reduced schedule leave, the Institute may temporarily transfer you to an available alternative position which better accommodates your recurring leave and which has equivalent pay and benefits.

Returning From Leave

If you take leave because of your own serious health condition (except if you are taking intermittent leave), you are required to provide medical certification that you are fit to resume work. You may obtain Return to Work Medical Certification Forms from Human Resources. Employees failing to provide the Return to Work Medical Certification Form will not be permitted to resume work until it is provided.

Extended Leave For Serious Health Condition

Leave taken because of your own serious health condition may be extended on a month-to-month basis for a maximum of an additional four weeks upon: (1) written request to the Institute; (2) proof that the serious health condition has continued; and (3) approval by the Institute (which is subject to its business needs). If you do not return to work on the originally scheduled return date nor request in advance an extension of the agreed upon leave with appropriate documentation, you will be deemed to have voluntarily terminated your employment with the Institute. If you request an extension of your leave beyond the initial 12-week period, you must submit medical certification of your continued serious health condition in advance for each month that the leave is extended. Reinstatement is not guaranteed on an extended leave and will depend on the Institute's needs.

No Work While On Leave

The taking of another job while on Family/Medical Leave or any other authorized leave of absence is grounds for immediate termination.

State and Local Family and Medical Leave Laws and Other Company Policies - Where state or local family and medical leave laws offer more protections or benefits to employees, the protections or benefits provided by such laws will apply.

Leave of Absence Without Pay

Approval for unpaid leave may be granted, at the discretion of management, for reasons such as important personal or family matters, educational course requirements, vacation, community or public service work, religious retreat, or military summer camp. In all cases, accrued vacation time must be used before unpaid leave begins.

Military Leave of Absence

If you enter the military service of the United States, you are eligible for an unpaid military leave of absence. Present Human Resources with a copy of your service papers as soon as you receive them.

During your absence, your length of service accumulates and upon application within 90 days from date of discharge from military service, you will receive the current rate of pay and other benefits which have changed during your absence.

If you are recalled to attend yearly Reserve or National Guard duty, you will be granted a temporary military leave of absence. You should give your supervisor and Human Resources as much advance notice as possible so that we may ensure proper coverage while you are away. In addition, if you are in the Reserves or National Guard and have completed your introductory period before commencing the reserve duty, the Institute will pay the difference between your service pay and your basic earnings for a maximum period of two weeks per year. Proof of reserve pay is required in order to enable the Institute to pay you accordingly.

Harassment

The Institute prohibits harassment of one employee by another employee, supervisor, or third party on the basis of race, religious creed, color, age, sex, sexual orientation, marital or veteran status, national origin, citizenship, ancestry, or mental or physical disability.

While it is not easy to define precisely what harassment is, it certainly includes teasing, slurs, epithets, threats, derogatory comments, unwelcome jokes or advances, suggestive behavior and/or verbal or physical conduct including, but not limited to, drawings, pictures, jokes, teasing, uninvited touching, or other similar conduct.

Any employee who feels that he or she has been subject to harassment, or he/she witnesses such conduct, should report this immediately to his/her supervisor, the Director, Human Resources, or the Human Resources Manager. All allegations of harassment will be speedily and discreetly investigated and appropriate action taken. Employees participating in any investigation under this policy will have the Institute's assurance that no reprisals will be taken as a result of a harassment complaint.

Violations of this policy will not be tolerated and may result in disciplinary action up to and including discharge.

Sexual Harassment and Prevention

The Institute prohibits sexual harassment of any employee by another employee, supervisor, or third party. While it is not easy to define precisely what sexual harassment is, it certainly includes unwelcome sexual advances, requests for sexual favors and/or verbal or physical conduct of a sexual nature including, but not limited to, drawings, pictures, jokes, teasing, uninvited touching or other sexually related comments.

Harassment may take the form of either overt conduct or the existence of a "hostile environment." While it is not easy to define precisely what overtly harassing conduct is, it certainly includes unwelcome advances, requests or suggestions and any act, physical, verbal or visual such as uninvited touching or offensive comments.

A harassing or hostile environment is one which allows for, and possibly encourages, jokes or degrading comments of a sexual nature directed at a person or a group of people. Such behavior will not be condoned in the workplace.

Violation of the policy may result in disciplinary action up to and including dismissal of the harasser.

General Rules of Conduct

As we are all aware, rules and regulations are essential to the general safety and welfare of our employees and to the efficient operation of the Institute. The following rules have been established for everyone's guidance while employed at AIP. This list of rules is not intended to be all-inclusive, since it is impossible to determine all the circumstances which may arise. However, these rules will provide illustrative standards by which employees should conduct themselves. All employees of AIP are employed at-will. Accordingly, employees may be terminated at anytime, with or without cause and with or without notice.

The procedure for handling discipline may include verbal warning, written warning, suspension without pay, and termination of employment. However, some situations may require immediate termination.

The following are examples of unauthorized behavior:

- Insubordination
- Foul or abusive language
- Use or possession of intoxicants or illegal drugs on or off AIP's premises during work hours; reporting to work while under the influence of intoxicants or illegal drugs
- · Sleeping on the job
- Fighting on the job or the threat of bodily harm to others while on the job
- Misuse of or damage to Institute material or equipment or to the material or equipment of another employee
- Unauthorized removal of property belonging to the Institute or another employee
- Carelessly endangering the safety of oneself or others
- Constant pattern of tardiness or absenteeism without authorization
- Misbehavior including but not limited to: horseplay, harassing or intimidating fellow employees, making malicious or derogatory statements about fellow employees or about the Institute, misuse of confidential information, falsifying records, and illegal conduct

- Violation of safety or other operating rules. A positive attitude for the safety of your fellow employees and yourself must be observed at all times. This includes using proper safety equipment and reporting any unsafe practice to your supervisor
- Carrying or possessing weapons of any kind on Institute property
- Parking in non-designated areas
- Unauthorized use of Institute telephones
- Solicitation of any kind by an employee of another employee while either is on working time
- · Inappropriate dress

Electronic Communications Policy

The Institute's e-mail system is normally for business use only. Electronic communications should have a business purpose and may not be used to solicit for religious or political causes, outside organizations or other personal matters unrelated to the business of the Institute. Employees should be aware that the Institute may access electronic communications at any time for any reason.

Staff of the Institute may access its electronic communications systems without notice to users; reasons for such access include (but are not limited to): routine system maintenance, prevention or investigation of alleged misuse of its systems, and assuring compliance with software copyright laws.

The Institute's policy prohibiting harassment applies to the use of the Institute's electronic communications systems.

Employees who violate the Institute's Electronic Communications Policy may be disciplined, up to and including termination.

Miscellaneous

Access Cards

Maryland employees will be issued security access cards, which will admit them into the building through security doors and will serve as identification upon request.

Bulletin Boards

Important business notices and items of general interest are continually posted by Human Resources on our employee bulletin boards at all locations. Make it a practice to review them frequently. This will assist you in keeping up with what is current at AIP. Employees are not permitted to post material on the bulletin board or elsewhere in AIP facilities.

Child Care Centers

ACP's Child Care Center in College Park, Maryland and AIP's Center in Melville, New York accept children from six weeks through five years of age. The Maryland Center operates from 8:00 a.m. to 6:00 p.m. and the Melville Center operates from 7:45 a.m. to 5:45 p.m., Monday through Friday, when the Institute is open. Fees are based upon the child's age and the program in which the child is enrolled.

Our first priority is the nurturing development of children in a secure environment. The Centers are staffed by professional early childhood educators and provide a wonderful place to play, learn, and grow.

Dress Code

The Institute expects each employee to maintain a neat, well-groomed appearance, and to behave in a professional manner. Unbusinesslike conduct will be brought to the employee's attention by the immediate supervisor.

Identification/Access Badges

New York employees will be issued photo identification badges which will admit them to the building as well as AIP areas. At times, employees may be asked to display their badges. All visitors must register and receive a temporary identification badge at the reception desk.

INSIDE AIP

This newsletter, published monthly, is distributed to all staff.

Inclement Weather Closings

The Institute monitors all hazardous weather conditions. If a decision for a closing or late arrival is made, management will communicate information concerning revised business hours.

In New York, there is a "snow list," which is activated as a telephone chain; once the decision to close (or to open late) has been made, employees designated as part of the telephone relay will proceed with their departmental calls. We will make every effort to notify WALK FM 97.5, WBAB FM 102.3, and WHLI AM 1100 or 740, as early as possible of any closing or delayed opening. All employees will be notified as early as possible.

In Maryland, on the first day of inclement weather, all organizations in ACP will follow the decision announced by the University of Maryland. The next day and every day thereafter, there will be a recorded message on the AIP "snow line" (301/209-3636) advising employees of a closing or of revised business hours for the day.

If an early closing time is announced, all employees are expected to observe the revised hours of work. An employee who has a planned day off when the office is closed due to inclement weather will be charged accordingly (i.e., vacation or personal day).

An employee who feels unable to travel to work because of severe weather conditions on a day when the Institute is open for business may use a day of vacation or personal leave. If you have no personal or vacation time available, you may take a day of unpaid leave. Advise your supervisor at the start of your shift if you will not be able to work.

Lunchrooms

The Institute maintains lunchrooms at its New York and Maryland locations. Free coffee and tea are provided in the morning before 8:45 a.m. (NY) and 8:30 a.m. (MD), during lunch time, and during morning and afternoon breaks at all locations. Employees must arrange their lunch time, at the discretion of their supervisors, between the hours of 12:00 noon and 2 p.m.

Personal Visits and Telephone Calls

Any necessary personal telephone calls should be made during break or lunch periods. Should an emergency arise, your family or friends should be directed to contact Human Resources and someone there will arrange that you be notified.

Solicitation/Distribution

We believe that employees should not be disturbed or disrupted in the performance of their job duties. For this reason solicitation of any kind by an employee of another employee is prohibited while either person is on working time. Solicitation of any kind by non-employees is prohibited at all times.

Distribution of advertising material, hand bills, printed or written literature of any kind in working areas of our Institute is prohibited at any time. Distribution of literature by non-employees on Institute premises is prohibited at all times.

Good Housekeeping

Good housekeeping not only improves the appearance of our facilities, but also prevents fires, accidents, and personal injuries. You are responsible for keeping your work area clean and neat at all times. AIP counts on you to keep our work environment clean and safe. We urge you to discard or recycle all garbage in the receptacles provided throughout our buildings.

Our mutual effort in keeping AIP's work environment clean and professional in appearance at all times will make our time at work safer and more enjoyable.

Safety First

AIP maintains an active safety program. Your cooperation is a vital part of this program to protect you, your fellow employees and our visitors from injury. The following are some safety rules we would like you to pay particular attention to:

- Immediately report any condition or practice that appears unsafe to your supervisor.
- Operate only equipment that you are trained and authorized to use.
- Observe smoking regulations which permit smoking only in designated areas outside the buildings.
- In case of fire, designated people are stationed in each area to act as fire wardens. Please look to them for instructions, and obey their orders.
- Do not block fire corridors or fire exit doors. Furniture, equipment, or electric cords may not be stored in front of exit doors.
- Familiarize yourself with the location of fire extinguishers in all areas of our building.
- Approach walkways and intersections carefully. Do not run in the building.
- · Drive cautiously in parking areas.
- Become familiar with emergency evacuation procedures.
- Wear safety gear where necessary.
- Do not bring unauthorized visitors into AIP.
- Immediately report all injuries incurred by yourself, fellow employees, or visitors, however slight, to your supervisor and Human Resources. They will assist in arranging for appropriate medical attention.

Smoking Policy

For the health and comfort of its employees and in compliance with applicable laws and regulations, the Institute maintains smoke-free facilities in its Maryland and New York locations. Smoking is not permitted in AIP buildings (owned or leased property).

Drug-Free Workplace Policy

It is the policy of the Institute, in compliance with federal, state, and local regulations, to prohibit the unlawful manufacture, sale, transfer, possession, or use of a controlled substance on the Institute's premises or work sites, including the Institute's vehicles and any private vehicles parked at Institute work sites, or while engaged in Institute activity at other locations. The Institute's Drug-Free Workplace Policy is available in Human Resources.

Full compliance with the Drug-Free Workplace Policy is a condition of employment and continued employment at the American Institute of Physics. Any employee who violates the policy shall be subject to discipline up to and including immediate discharge.

Employment at Will

All employees of the Institute are at-will employees. This means that the employment relationship may be terminated by either the employee or the Institute for any reason and without prior notice.

The policies and procedures of the Institute, or statements made by any employee of the Institute, whether oral or written, are not contracts. These policies, procedures, or statements are not a guarantee of employment for any length of time or for any particular terms or conditions of employment. These policies, procedures, and statements may be changed at any time, with or without notice and should not be relied upon by any employee or applicant.

The "employment at will" relationship can only be changed by an agreement, in writing, specifically modifying this relationship, and signed by Institute official.

If You Must Leave Us

Your employment with AIP is not for any stated period, and you may resign at any time. We understand there may be circumstances which may necessitate the termination of your employment with us. We request that you provide your supervisor with as much advance notice as possible. Your thoughtfulness will be appreciated. Similarly, AIP may terminate the employment relationship at any time and for any reason. At the end of your employment, you will be paid for time actually worked and accrued vacation.

A Few Closing Words

The information in this *Handbook* is general in nature. Should questions or discrepancies arise, established procedures will be consulted for complete details. The policies, benefits, and rules contained in this *Handbook* may be changed or deleted at any time.

Again, welcome to AIP. Please speak to your supervisor or Human Resources if you have questions that are not answered by this *Handbook*.

Receipt of Employee Handbook

I have received a copy of the AIP Employee Handbook and understand that I am responsible for becoming familiar with the policies described in it. I understand that the information contained in it represents management guidelines only, which may be modified from time to time. This Handbook is not a contract. I understand that neither the Handbook's policies nor any other representations made by a management representative, at the time of hire or at any time during employment, are to be interpreted as a contract between the Institute and any of its employees. I further understand that my employment is voluntarily entered into, that I am free to resign at any time, and that AIP may terminate the employment relationship whenever it determines that it is in its best interest to do so, and do so with or without notice or cause. I understand that I am employed at will.

Signature	Date
Employee's Name	W. C.
Employee's Name (print please)	

Revised 6/99

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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Jeff S	Schmidt		From:		
Wash	ington, DC 20008	3	*	10 South Howard Street 3rd Floor Baltimore, MD 21201	
		n(s) aggrieved whose identity is 29 CFR § 1601.7(a))			
EEOC Char	ge No.	EEOC Representative		Telephone No.	
12H-2001	I-00020C	Sandra A. Byrd, State & Local Coordinator		(410) 962-4329	
THE EEC	C IS CLOSING	ITS FILE ON THIS CHARGE FOR	R THE F	FOLLOWING REASON:	
Ш	The facts alleged i	n the charge fail to state a claim under any	y of the stat	atutes enforced by the EEOC.	
	Your allegations did not involve a disability as defined by the Americans with Disabilities Act.				
	The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.				
	Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.				
	Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.				
	While reasonable efforts were made to locate you, we were not able to do so.				
	You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.				
	The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.				
X					
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		- NOTICE OF (See the additional inform			
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Enclosure with EEOC Form 161 (3/98)

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

(This information relates to filing suit in Federal or State court <u>under Federal law.</u>
If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)

PRIVATE SUIT RIGHTS - Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), or the Age Discrimination in Employment Act (ADEA):

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS - Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred more than 2 years (3 years) before you file suit may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/00 to 12/1/00, you should file suit before 7/11/02 – not 12/1/02 – in order to recover unpaid wages due for July 2000. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII and the ADA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC Assistance -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, please make your review request within 6 months of this Notice. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

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Prince George's County
HUMAN RELATIONS COMMISSION
1400 McCormick Drive, Suite 245
Largo, Maryland 20774
Telephone (301) 883-6170

IN THE MATTER OF:

Jeff Schmidt

Complainant

٧s.

RE: HRC Case No.: RF00-1135

EEOC Case No.: 12HA10020

American Institute of Physics

Respondent

COMMISSION ORDER

The Human Relations Commission having been petitioned to review the actions of the Executive Director in the administrative dismissal of the above-referenced complaint, received the recommendations of the Employment Panel, which reviewed the file in this matter and supported the actions of the Executive Director.

The Commission at its regularly scheduled meeting on June 28, 2004, voted to adopt the recommendations of the Employment Panel and the actions of the Executive Director in dismissing said complaint as undisturbed.

SAMUEL N. FONTAINE

Chairperson

Prince George's County Human Relations Commission



THE PRINCE GEORGE'S COUNTY GOVERNMENT

PRINCE GEORGES COUNTY ALL-AMERICA CITY 1006. 1007

HUMAN RELATIONS COMMISSION

Jeff Schmidt

Washington, D.C. 20008

Complainant

VS.

HRC Case No.: rf00-1135

EEOC Case No.: 12HA10020

American Institute of Physics - One Physics Ellipse

College Park, Maryland 20740

Respondent

DETERMINATION

Under the authority vested in me by Division 12. Subdivision VII, Section 2-222, Prince George's County Code, 1995 edition, as amended, I issue the following determination as to the merits of the subject charge.

The Respondent is an employer within the meaning of Section 2-186(5) Division 12, Subtitle I, Prince George's County Code, 1995 edition, as amended and the timeliness and all other jurisdictional requirements have been met.

FACTS AND CONCLUSIONS

Complainant alleges that Respondent retaliated against him in the termination of his employment on May 31, 2000.

Respondent denies Complainant's allegation.

Respondent is a not-for-profit membership corporation that promotes the advancement of knowledge of physics and is located in College Park, Maryland. Respondent hired Complainant initially as an Associate Editor, then as a Senior Associate Editor.

Complainant alleges that on or about August 17, 1999, he made an internal Title VII based complaint to his Supervisors that the Respondent was not following its Affirmative

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Letter of Determination Jeff Schmidt HRC No.: rf00-1135 Page 2

Action Program in the hiring and promotion of employees (Black) in professional positions. Complainant alleges that after he made his internal Title VII based complaint on August 17, 1999, he was given a negative Performance Review. Complainant alleges that on May 31, 2000, he was accused of writing a book on company time that he alleges is not true, and was terminated. Complainant alleges that from January 28, 1998, to May 31, 2000, Respondent banned any private conversations between himself and co-workers (White) because Respondent thought he was organizing to bring about changes in Respondent's policies, including their discriminatory hiring practices.

Respondent denies Complainant's allegations. Respondent proffers that for several years prior to his discharge, Complainant consistently was counseled because he failed or refused to meet Respondent's productivity standards. Respondent proffers that in late May 2000, Respondent learned that Complainant recently published a book announcing that it was written on "stolen time." Respondent proffers that in the book's introduction—section, Complainant unequivocally admitted to writing it during work hours. Respondent proffers that in pertinent part, Complainant wrote in the Introduction of his book: "This book is stolen, written in part on stolen time... so I began spending some office time on my own work...." Respondent proffers that after Complainant admittedly used Respondent's time to write the book, rather than strive to meet Respondent's productivity standards, his employment was terminated.

Respondent acknowledges that in 1997 Complainant alleged that Respondent failed to make efforts to recruit minority professionals for a particular Physics Today (PT) Associate Editor position. Respondent proffers that its Executive Director/CEO investigated Complainant's allegations and found them to be baseless. Respondent proffers that its Executive Director/CEO met with Complainant several times in 1998, to relay the findings of his investigation.

Respondent proffers that Complainant's negative performance evaluation and subsequent discharge was not based on his filing an internal Title VII based complaint. Respondent proffers that for several years prior to his discharge, Complainant failed or refused to meet Respondent's productivity goals, and was resistant, at times, to assuming responsibility for articles prior to the "ready to edit" stage. Respondent proffers that it never banned Complainant from having private conversations with his co-workers. Respondent proffers that after Complainant made his internal Title VII based complaint, Respondent afforded Complainant favorable treatment by allowing Complainant to take a six month sabbatical in 1998-1999, and by allowing Complainant to change his employment status from full-time to part-time.

The focus of the Commission's investigation centers on Complainant's allegation that Respondent retaliated against him when he was banned from talking to his co-employees Letter of Determination Jeff Schmidt HRC No.: rf00-1135 Page 3

(White), given a negative performance evaluation, and terminated his employment on May 31, 2000.

The first focal point of the Commission's investigation centers on Complainant's allegation that after filing an internal Title VII based complainant he was given a negative performance evaluation.

A review was conducted of Complainant's personnel file. The review reveals a performance review dated February 15, 1995 for the period February 1994-January 1995. The performance review reveals an overall rating of 3.0. The performance review reveals that Complainant is capable of editing 16 articles a year, and he "did not meet this goal in 1994." The performance review states that Complainant's "productivity on his main function of editing feature articles is below capacity. With the magazine's call for more but shorter articles, [Complainant'] must aim to edit a minimum of 16 articles published April 1995 to March 1996." The performance review reveals that it was signed by Complainant on February 16,1995.

A review was conducted of Complainant's performance review dated February 13, 1997 for the period February 1996-January 1997. The performance review reveals an overall rating of 4.0. The performance review reveals Complainant was "one shy of his agreed upon goal of 16. The performance review states that Complainant "needs to increase his article output in 1997 to at least 16, and preferably 18." The performance review reveals that Complainant signed it on February 13, 1997.

A review was conducted of Complainant's performance review dated March 12, 1998 for the period February 1997-January 1998. The performance review reveals an overall rating of 3.0. The performance review reveals Complainant's "articles are generally on time and are often early. For this review period, he was asked to produce 16-18 articles. Seven months into this review period, we made an adjustment (reflected in the above weight) because of his imminent fatherhood that effectively reduced his production minimum from 16 to 15, and he met this revised goal." The performance review states "over the last few years, 'Physics Today' has been undergoing a number of changes-including raising levels of productivity, editorial quality and graphic design. [Complaint] is very capable of meeting these new demands. At the request of the Editor, [Complainant] did begin to handle his own correspondence with authors, as is done by all other articles editors. He has not yet begun to do his own keyboarding or editorial changes, as is done by all other articles editors."

The performance review reveals that "in the next review period, [Complainant] is expected to produce 18 high-quality articles, editing and rewriting text as needed, handling his own correspondence and doing all of his own keyboarding. The articles

Letter of Determination Jeff Schmidt HRC No.: rf00-1135 Page 4

must be consistent with the magazine's standards of accuracy, readability, brevity, and visual appeal." The performance review reveals that Complainant did not sign the review.

A review was conducted of a memorandum dated October 1, 1998, from Complainant's Supervisor to Complainant. The memorandum reveals that the subject of the memorandum was performance, expectations, and sabbatical. The memorandum states "to avoid misunderstandings, recall my expectations for your performance: A minimum of 18 completed, high-quality articles per year; consistently constructive, helpful, collegial behavior supportive of the overall editorial effort of the magazine." The

memorandum states "you have asked for a six-month sabbatical and we would like to accommodate your request. Until a means of covering your workload is found, however, I expect you to continue working to meet your performance goals. Upon returning from a sabbatical, my expectations for you will remain the same." The memorandum reveals Complainant received the memorandum.

A review was conducted of a performance review dated August 13, 1999, for the period February 1998-August 1999(PT issues March '98-Sep. '99)-incl. 6-mo. Sabbatical. The performance review reveals an overall rating of 2.8 that was changed on August 20, 1999 to 3.0. The performance review states Complainant "was asked to produce 18 high-quality articles, and he actually produced 13.5, which is unacceptable. The performance review states Complainant repeatedly engaged in disruptive and counterproductive behavior, damaging a collegial office climate and thereby undermining the editorial effort of Physics Today. Such behavior is unacceptable." The performance review states the following as examples of Complainant's unacceptable behavior. Complainant was removed from working on the PT anniversary issue, and produced a very unbalanced set of decadal excerpts strongly centered on political issues, whereas Complainant had been directed to focus on physics excerpts. Complainant wrote a 19 page response to his last performance review with another 38 pages of addenda (as he is entitled to do), and circulated it to PT staff members. The performance review reveals that Complainant signed the review on August 19,1999.

A review was conducted of a memorandum dated August 19, 1999, from Complainant to his Supervisor. The memorandum reveals as its subject "My 1999 performance review (dated 13 August 1999 and signed by you on 17 August 1999)." The memorandum states "I was disappointed to find that you wrote my 1999 performance review in the same punitive spirit as my 1998 review. Like my 1998 review, the present review understates or completely leaves out my accomplishments and does not mention the praise that I have received for my work. At the same time, it contrives deficiencies and plays them up. I had thought you had gotten beyond that."

Investigation disclosed that Complainant's overall performance rating for the period February 1997-January 1998, after he filed his internal Title VII based complaint was the same as his rating for the period February 1994-January 1995. Investigation disclosed that Respondent has raised concerns regarding Complainant's productivity since before Complainant filed his internal Title VII based complaint.

Based on evidentiary findings, there is insufficient evidence to support Complainant's allegations.

The second focal point of the Commission's investigation centers on Complainant's allegation that after filing an internal Title VII based complaint he was banned from having private conversations with co-workers (White).

A review was conducted of a memorandum dated September 26, 1997, from Respondent to Complainant. The memorandum states "We welcome constructive and productive contributions from you, but behavior by you that we consider destructive and counterproductive will no longer be tolerated. Your continued interruption at our retreat, after you were instructed to hold your questions and comments until the discussion segment of the agenda, is an example of what we mean. The continuation of such behavior on your part, in the office or at any work-related activity, will not be tolerated."

An interview was conducted with an Editorial Assistant. This witness stated that she has been employed with Respondent and remembers Complainant but knows nothing about the circumstances surrounding his departure from Respondent.

An interview was conducted with a former employee. This witness stated that he worked for Respondent from July 1995 to March 2000, and left because he was disgruntled with the way Respondent was being managed. This witness stated that he and Complainant had adjoining offices and worked closely together. This witness stated that Complainant in the fall of 1996 was raising issues with management concerning compliance with Respondent's Affirmative Action Plan. This witness stated that he saw a note given to Complainant that he considered a "gag order." This witness stated that the note told Complainant that his job was at risk, and that he should stop being counter-productive. This witness stated that a co-employee received the same note. This witness did not state that he was adversely affected because of his participation in protected activity. This witness stated that be believes Complainant was affected because he was considered the ring-leader.

An interview was conducted with another former co-employee. This witness stated that she was employed with Respondent from September 1989 to November 1999. This witness stated that Complainant started having trouble when he started questioning

Respondent's adherence to its Affirmative Action Plan. This witness stated that she and other employees participated in questioning Respondent's adherence to its Affirmative Action Plan. This witness stated that she saw a note given to Complainant and another co-employee that she considered a "gag order" that stated they were not to say anything that was counter productive.

This witness stated that over the years her ideas got dismissed, but as she became more assertive she got more respect. This witness stated that in 1995, she was receiving less pay than Editors (Non-Asian American). This witness stated that she complained that she was being paid less because she was the only Asian American, and immediately received a promotion and pay raise.

This witness stated she was not adversely affected for her participation in protected activity. This witness stated that she believes that she was not adversely affected because she was less assertive than Complainant.

An interview was conducted with another former co-employee. This witness is the co-employee cited above as receiving the "Gag Order." This witness stated that he was employed with Respondent from 1991 to May 1998. This witness stated that he resigned his position with Respondent because he was unhappy about how poorly things were managed. This witness stated that Respondent's parent company did not adequately support it financially. This witness stated that sometime in 1997, Respondent's CEO held a meeting during which he raised issues regarding lack of financial support, lack of equipment, and poor management. This witness stated that the CEO became very annoyed. This witness stated that after the meeting, Respondent's Publisher pulled him aside and told him not to criticize upper management in public, and that issues like those he raised could only be raised in private. This witness stated that the same thing was imposed on Complainant. This witness stated that Complainant could only raise things related to articles, and nothing related to the work place, how the place was run, or about the culture of the place.

This witness stated that Complainant wanted the work place to operate in more of a collective fashion instead of receiving orders from management. This witness stated that at one time Complainant raised issues of affirmative action (minorities under represented). This witness stated that he was not involved in the affirmative action issues raised by Complainant.

This witness stated that once at a company retreat, Complainant was yelled at to be quiet. This witness stated that as a result of the issues that he did raise, he was treated more harshly. This witness stated that meetings he participated in became more acrimonious. This witness stated that in some respects he was treated the same way.

This witness stated that a group of them were regarded as troublemakers and agitators. This witness stated that part of his duties were management, so sometimes he was looked at as being outside the group and treated better. This witness stated that when he was seen as being inside the group he was treated more harshly.

This witness stated that the reason for Complainant's termination was bogus. This witness stated that Complainant was either terminated because management did not like the language in the book, or because management calculated to get rid of a thorn in their side (Complainant raised affirmative action issues and pushed for collective management).

A review was conducted of the memorandum dated September 26, 1997, from Respondent to Complainant. The memorandum states the following:

"We welcome constructive and productive contributions from you, but behavior by you that we consider destructive and counterproductive will no longer be tolerated. Your continued interruption at our retreat, after you were instructed to hold your questions and comments until the discussion segment of the agenda, is an example of what we mean. The continuation of such behavior on your part, in the office or at any work-related activity, will not be tolerated."

The memorandum reveals that Complainant was not banned from having private conversations with co-workers.

Investigation disclosed that some of Complainant's co-workers participated in protected activity along with Complainant, but were not adversely affected.

Based on evidentiary findings, there is insufficient evidence to support Complainant's allegations that he was banned from having private conversations after filing an internal Title VII based complaint.

The third focal point of the Commission's investigation centers on Complainant's allegation that after filing an internal Title VII based complaint he was terminated.

Investigation disclosed that Respondent has an Equal Opportunity in Employment Policy that states Respondent will not discriminate on the basis of any protected characteristic.

Investigation disclosed that Respondent has a General Rules of Conduct Policy. The Policy states that all employees are employed at-will and can be terminated with or without cause and with or without notice. The Policy reveals the following conduct is included but not limited to the unauthorized behavior that is subject to discipline up to

and including discipline: misuse of confidential information, falsifying records, illegal conduct, and solicitation of any kind by an employee of another employee while either is on working time.

A review was conducted of Complainant's personnel file. The review did not reveal written termination notice. The review did not reveal any written Title VII based complaints.

A review was conducted of a letter dated November 5, 1997, to Respondent's CEO from Complainant. The letter reveals Complainant made an internal Title VII based complaint. The letter reveals Complainant and other staff members at a staff meeting in November 1996 raised Title VII based concerns.

A review was conducted of the Introduction to the cited book Complainant wrote. The introduction states "this book is stolen. Written in part on stolen time, that is, I felt I had no choice but to do it that way."

An interview was conducted with a former employee. This witness stated that he held the position of Associate Editor, and his primary function was writing news articles. This witness stated that he did free lance work with Respondent's formal permission. This

witness stated that because he did not have a 9-5 job, there was no real distinction between when he was working on company time or his own time.

An interview was conducted with another former employee. This witness stated that he held the position of Associate Editor, he did free lance work. This witness stated that he never wrote his free lance articles on company time, he only wrote them home at night.

Interviews were conducted with seven similarly situated employees (5 current employees, 2 former employees). Six of the employees stated that they had not written books or periodicals on company time. One of the employees stated that in order to free lance an employee must get clearance from Respondent, and must free lance on their own time. This employee stated that any work done for an outside publication on company time is considered unethical in this business. Two witnesses stated that they know of employees who have written books or periodicals on company time, but they do not know if Respondent was aware of same. One witness stated that he has a colleague currently writing a book, but his colleague changed his work schedule to a three-day shift to have time to write. This witness stated that employees wrote free lance articles, but on their time. One witness stated that he did outside work, but not on company time.

The Commission in a Title VII Retaliation complaint under Sec. 704(a) must establish that the charging party either opposed an unlawful practice or participated in the

Page 9

investigation of same. The Commission must establish that the Respondent had knowledge that the charging party engaged in the protected activity (this burden was satisfied, Complainant filed an internal Title VII based complaint on 11-5-97). Second, there must have been an adverse action taken against the charging party in close proximity to the time the charging party engaged in the protected activity (this burden was satisfied-Complainant was terminated 5/31/00). Finally, there must be proof of a causal connection between the protected activity (filed complaint) and the adverse employment action (Complainant's termination on 5/31/00) taken against the charging party (this burden was not satisfied).

In order to establish unlawful retaliation, there must be proof that the Respondent took an adverse action because the charging party engaged in protected activity. Proof of this retaliatory motive can be through direct or circumstantial evidence. A violation is established if there is circumstantial evidence raising an inference of retaliation and if the Respondent fails to produce evidence of a legitimate, non-retaliatory reason for the challenged action, or if the reason advanced by the Respondent is a pretext to hide the retaliatory motive.

An initial inference of retaliation arises where there is proof that the protected activity and the adverse action were related. Typically, the link is demonstrated by evidence that:
(1) the adverse action occurred shortly after the protected activity, and (2) the person who undertook the adverse action was aware of the Complainant's protected activity before taking the action. An inference of retaliation may arise even if the time period between the protected activity and the adverse action was long, if there is other evidence that raises an inference of retaliation.

Even if the Respondent produces evidence of a legitimate, nondiscriminatory reason for the challenged action, a violation will still be found if this explanation is a pretext designed to hide the true retaliatory motive. Typically, pretext is proved through evidence that the Respondent treated the Complainant differently from similarly situated employees or that the Respondent's explanation for the adverse action is not believable. Pretext can also be shown if the Respondent subjected the Complainant's work performance to heighten scrutiny after he engaged in the protected activity.

Based on evidentiary findings, there is insufficient evidence to support Complainant's allegations that he was terminated because he filed a Title VII based complaint.

Based on overall evidentiary findings, there is insufficient evidence to support Complainant's allegations that Respondent retaliated against him in the terms, conditions (performance reviews), privileges (private conversations with co-workers), and termination of his employment on May 31, 2001.

This Determination concludes the staff's processing of the subject charge.

Should Complainant have additional information which Complainant feels may substantially alter my decision in this matter, Complainant may write to me within thirty (30) days from the date of this letter and request that this case be re-opened, providing such information or evidence.

Should the Complainant feel dissatisfied with this decision and have no additional information or evidence to offer, Complainant may in accordance with the Rules of Procedure governing the Prince George's County Human Relations Commission appeal the decision of the Executive Director, within thirty (30) days from the date of this letter by setting forth reasons for said appeal in a written request to:

Samuel N. Fontaine Chairperson Prince George's County HUMAN RELATIONS COMMISSION 1400 McCormick Drive, Suite 245 Largo, Maryland 20774

This decision constitutes a <u>final action</u> by this Commission concerning your complaint if no appeal is received within thirty (30) days of this date.

William A. Welch, Sr., Ed.D.

Executive Director

Prince George's County

Human Relations Commission

Cc: Complainant

Law Offices FINKELSTEIN & HORVITZ, P.C.

Suite 400 East 7315 Wisconsin Avenue Bethesda, Maryland 20814

Telephone: (301) 951-8400 Facsimile: (301) 951-8401

Nathan I. Finkelstein, DC, MD, GA Laurie B. Horvitz, DC, MD OF COUNSEL:
Margo E. Manspeizer, DC, MD

VIA OVERNIGHT DELIVERY

July 16, 2002

William A. Welch, Sr., Ed.D. Executive Director Prince George's County HUMAN RELATIONS COMMISSION 1400 McCormick Drive, Suite 245 Largo, Maryland 20774

Re: Schmidt v. The American Institute of Physics

Dear Dr. Welch:

This letter is submitted on behalf of Jeff Schmidt. He is seeking reconsideration of a determination that was rendered on June 17, 2002. For the reasons set forth below, Mr. Schmidt asks the Commission to reopen his case and consider additional evidence.

I. Introduction

On June, 17, 2002, the Prince George's County Commission on Human Relations issued a letter of determination in the case <u>Schmidt v. American Institute of Physics.</u> In that case, Jeff Schmidt ("Schmidt") alleges that his former employer, the American

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Institute of Physics ("Company"), retaliated against him for challenging the Company's failure to adhere to Equal Employment Opportunity employment practices in violation of Title VII. Upon review, the Commission found that there was insufficient evidence to support Schmidt's allegations that the Company retaliated against him in the terms, conditions, privileges and termination of his employment. However, a proper and careful consideration of the evidence establishes that Schmidt successfully established a prima facie case of Title VII violations that the Company failed to rebut. Furthermore, in light of new evidence that will be introduced herein, as well as the public policy underlying Title VII, the Company clearly should be held liable for unlawful retaliatory conduct. Based on the evidence presented previously and herein, this case should be reopened.

Schmidt is a white male who had worked for 19 years as a staff editor at *Physics Today* magazine, a Company publication, before his employment was terminated on May 31, 2000. While employed at *Physics Today*, Schmidt actively challenged the Company's all-white employment practices at the professional level. Schmidt organized with other employees of the Company to form a coalition of employees who disagreed with what they considered to be discriminatory employment practices. By far, Schmidt was the most outspoken member of this group. In fact, on November 5, 1997, Schmidt took the initiative to file an internal Title VII based complaint, even though Schmidt himself is not a member of any protected class. Schmidt alleges that following this action, the Company retaliated against him in a number of ways that adversely affected his employment, and that finally resulted in the termination of his employment on May 31,

¹Since *Physics Today* relocated to College Park, Maryland, in 1993, it has hired exclusively white professionals.

2000.

The law as stated in the Commission's letter of determination is as follows: In a Title VII claim of retaliation under Sec. 704 (a), the Commission must first establish that the charging party either opposed an unlawful practice or participated in the investigation of the same. The Commission must establish that the Respondent had knowledge that the charging party engaged in the protected activity. As the Commission correctly noted in its letter, this burden was satisfied when Schmidt filed an internal Title VII complaint on November 5, 1997. Furthermore, Schmidt openly challenged the Company's failure to interview or hire minority candidates on numerous occasions, and openly organized with co-workers on this issue. The Company was well aware of these activities. In addition to the Title VII complaint, Schmidt's activities included the following:

- (1) on October 4, 1996, Schmidt complained to the *Physics Today* advisory committee about unjustified salary differentials between the one minority professional and the white professionals;
- on November 15, 1996, Schmidt led the effort by a few staff members to request in writing that the company change its hiring practices to "increase diversity of *Physics Today* staff";
- on November 26 and 27, 1996, Schmidt and a co-worker successfully pressured the company into sending a job-opening announcement to minority group organizations and gave the entire *Physics Today* staff a progress report;
- (4) in April 1997, at a *Physics Today* staff meeting, Schmidt argued strongly that promising minority applicants should be interviewed for an open position; *Physics Today* publisher Charles Harris and Editor Stephen G. Benka said no;
- (5) on October 17, 1997, Schmidt met with the *Physics Today* advisory committee and objected to the magazine's discriminatory employment practices and failure to live up to its claim that it is an affirmative action employer;
- on November 7, 1997, Schmidt suggested to American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky that Brodsky speak with the only minority group member of the *Physics Today* staff about discrimination at the magazine (Brodsky failed to do so);
- (7) on March 20, 1998, Schmidt met with Mr. Brodsky and pressed him to conduct the equal opportunity staff training that he had promised (Brodsky failed to do so); and

(8) on April 27, 1998, Schmidt circulated to 12 co-workers a memo, the largest section of which detailed the company's resistance to equal opportunity. (See the chronology entries for these dates.)

Thus Schmidt engaged in extensive activism in furtherance of Title VII policies.

The law also states that there must have been an adverse action taken against the charging party in close proximity to the time the charging party engaged in the protected activity. Again, the Commission correctly found that this burden had been satisfied when Schmidt was terminated on May 31, 2000. Furthermore, the Company acted adversely against Schmidt and his co-workers on many other occasions. In one example, Schmidt's supervisor insisted on being included in Schmidt's private conversations with his co-workers, and stated, as his reason, that he wished to prevent any further organizing by Schmidt. The Company was made aware at the executive level of the manager's statement, and did nothing in response. Schmidt informed Company executives both verbally and in writing of his belief that the Company was banning his private conversations with co-workers. In no way did the Company dispute Schmidt's understanding of the Company's policies. Therefore, the Company ratified and approved the ban on Schmidt's private conversations with co-workers. This conduct clearly sent a message to Schmidt's co-workers that challenging the Company's employment practices was actively discouraged by the Company. Other co-workers who took issue with the employment practices felt hostility and pressure to an extent that caused them to leave the Company. This is further evidence of the Company's unlawful activity.

The Company also acted adversely toward Schmidt by penalizing him through his performance reviews. Significantly, two such reviews prevented Schmidt from obtaining the salary increase that he had reasonably expected. This constituted retaliatory

conduct by the Company. Again, the Company has failed to effectively rebut the presumption of a Title VII violation. Rather, the evidence shows that any reason offered by the Company in response to this action is purely pretext.

Finally, the law states that there must be proof of a causal connection between the protected activity (filed complaint) and the adverse employment action. The Commission found that the burden was not satisfied with respect to this element. However, the evidence shows that the reason proffered by the Company to explain its conduct is clearly pretextual. A proper consideration of the evidence shows that this element has been met. Furthermore, in light of new evidence that will be presented herein, as well as a proper consideration of the public policy that underlies a Title VII claim of retaliation, this case should be re-opened and reversed in favor of Schmidt and against the Company.

The Evidence Presented Establishes a Causal Connection between Schmidt's Protected Activity and Respondent's Adverse Employment Action in Clear Violation of Title VII.

To establish unlawful retaliation, there must be proof that the Respondent took an adverse action because the charging party engaged in a protected activity. Proof of a retaliatory motive can be through direct or circumstantial evidence. A violation is established if there is circumstantial evidence raising an inference of retaliation and if the Respondent fails to produce evidence of a legitimate, non-retaliatory reason for the challenged action, or if the reason advanced by the Respondent is a pretext to hide the retaliatory motive.

Here, the Commission correctly notes in its letter of determination that the evidence establishes an inference of retaliation, in that the adverse action (termination of employment) occurred shortly after the protected activity (filing complaint) and that the Respondent was aware of the protected activity before taking the action. Therefore, the Commission recognizes that a prima facie case of unlawful retaliation with respect to Schmidt's employment has been established.

Significantly, there is an abundance of direct and circumstantial evidence that establishes that Respondent violated Title VII by retaliating against Schmidt in the terms, conditions, privileges, and termination of his employment. Accordingly, where there is an inference of retaliation, the burden shifts to the Respondent to produce evidence of a legitimate, nondiscriminatory reason for the challenged action. Respondent has failed to meet this burden.

- II. Respondent has failed to produce evidence of a legitimate, nondiscriminatory reason for any of its adverse actions against Schmidt.
- A. The evidence establishes that Respondent retaliated against Schmidt in the terms, conditions and privileges of his employment.

The Ban.

Schmidt alleges that Respondent banned his private conversations with coemployees beginning on January 28, 1998. Specifically, Schmidt alleges that on two
occasions on January 28, 1998, his supervisor, Stephen G. Benka interrupted him as he
was speaking privately with a co-worker. In the first instance, Mr. Benka saw Schmidt in
a co-worker's office, opened the door, entered the room and asked if he could join the
conversation. Schmidt and his co-employee said okay. Later, when Schmidt was
speaking with a co-worker by telephone, Mr. Benka interrupted and demanded to be

included in the conversation. Schmidt and his co-worker asked why; Benka announced to Schmidt that he was forbidding all private conversations between staff members at work. It is alleged that Mr. Benka announced that all future conversations between staff members had to be open to management supervision. When asked why, he said something to the effect of "I don't want anything like what happened last year to happen again." Schmidt alleges that he understood this statement to refer to the workplace organizing regarding hiring practices that had taken place the previous year in which Schmidt had played a leading role. Furthermore, the Company was aware that Schmidt understood this statement to be a reprisal for his workplace organizing. On April 27, 1998. Schmidt wrote an appeal to two executives of the Company in which he complained about the ban on his private conversations in the workplace and described in detail the announcement made by Mr. Benka. The Company failed to address this aspect of the appeal, and made no attempts to correct Schmidt's understanding that the Company's policy was intended to discourage Schmidt's workplace organizing. This action alone would create a hostile work environment sufficient to sustain an action under Title VII. Clearly, the right to engage in private conversations with co-workers is a term, condition and privilege that Schmidt and other similarly situated employees enjoyed at the workplace. Once the Company became aware that Schmidt was employing such privileges to challenge the Company's employment practices and to encourage his coworkers to do the same, the Company communicated its intention to monitor and prevent any further use of such privileges. Furthermore, Mr. Benka's policy was ratified and approved at the executive level.

Importantly, Schmidt's allegations that he was subject to retaliation because he openly challenged the Company's employment practices are supported overwhelmingly with corroborating witness testimony. Within the Commission's letter of determination alone, the following statements are cited:

- "The witness stated that Complainant in the fall of 1996 was raising issues with management concerning compliance with Respondent's Affirmative Action Plan."
- "This witness stated that he believes Complainant was affected because he was considered the ringleader."
- "Complainant started having trouble when he started questioning Respondent's adherence to its Affirmative Action."
- "This witness stated that she believes that she was not adversely affected because she was less assertive than Complainant." (Emphasis added).
- "This witness stated that at one time Complainant raised issues of affirmative action" (minorities under-represented).
- "The witness stated that a group of them were regarded as troublemakers and agitators."

The evidence overwhelmingly establishes that the message sent by this Company to its employees is intolerable and undermines the aims of the Civil Rights Act of 1964. The Company's conduct in discouraging Schmidt and others from speaking out against its employment practices is exactly what the retaliation provision of Title VII seeks to prohibit. It is rare indeed, that any employee, particularly one who does not belong to any protected class, would openly challenge an employer's failure to practice equal employment opportunity. A Company must not be permitted to so blatantly seek to silence or discourage any employee from attempting to further the aims of such an important statute as the Civil Rights Act of 1964.

S 001355

Although the facts described above sufficiently establish a prima facie case that

Company retaliated against Schmidt in the terms, conditions and privileges of his

employment by Instituting a ban on his private conversations in the workplace, in support

of this position, the Commission is encouraged to consider the following:

In its earlier determination, the Commission evidently confused two different events — the gag order of September 26, 1997, and the ban of January 28, 1998 on Schmidt's private conversations with co-workers. Specifically, the Commission relied upon and quoted from the gag order memorandum in its finding that Schmidt was not banned from having private conversations after filing an internal Title VII based complaint. See Letter of Determination p. 7.

The Commission correctly notes that the gag order was not a ban on Schmidt's private conversations with co-workers. Rather, the gag order stated that behavior that the Company considered "destructive and counterproductive" would not be tolerated. When in context, this communication revealed the Company's complete intolerance of any comments by Schmidt regarding the treatment of persons within protected classes. its all-white employment practice as counterproductive. See, for example, the entries for April 1997 and October 17, 1997 in the chronology dated October 3, 2000, which Schmidt submitted to the Prince George's County Human Relations Commission on 21 November 2000.) As a result, Schmidt, and indeed, many other corroborating witnesses viewed the memo as a "gag order." Significantly, under pressure from staff, the Company rescinded the memo on December 2, 1997.

The ban on Schmidt's private conversations was imposed five months after the gag order was issued. Evidence of the ban is overwhelming:

- The enclosed contemporaneous letter (Exhibit B, dated 4 February 1998) from Schmidt to a co-worker on vacation describes in exhaustive detail the imposition of the ban on private conversations.
- The enclosed statements by co-workers describe the ban on private conversations. (Exhibit C, See pages 6, 7 and 8 of the 11-page document, dated May 2002, in which a human rights committee of scientists reports the findings of its investigation into Schmidt's firing. This is new material.)
- The enclosed document of dated April 27, 1998, explicitly appeals the ban to two top executives of the Company. (Exhibit D See pages 17-18 of the 57-page document of April 27,1998. This is new material.)
- Schmidt also appealed the ban orally, to one of the top executives, on June 25,1998. (See the chronology entry for that date.)
- Co-worker Paul Elliott, shortly after the ban on private conversations was imposed, appealed to *Physics Today* publisher Charles Harris to end the ban. (Harris took no action.)
- When Schmidt's supervisor learned that Schmidt had discussed a retaliatory performance review with his co-workers privately, he demanded that Schmidt name the co-workers with whom he had spoken. The co-workers did not want their names released, and their supervisor's unrelenting investigation of their private conversations with Schmidt intimidated them and served to reinforce the ban on Schmidt's private conversations with co-workers. (See record of the August 1999 "probe." This is new material.)

In light of the above evidence, the Commission erred when it found that there was never any ban on Schmidt's private conversations. That finding is not supported by the evidence and should be reversed. That ban, which remained in effect until Schmidt was dismissed, by itself warrants the issuance of a complaint and should not be tolerated by the Prince George's County Human Relations Commission.²

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² On a related issue, the Commission erred in its conclusion that "some of Complainant's co-workers participated in protected activity along with Complainant, but were not adversely affected." In fact, these co-workers, -- Graham Collins, Jean Kumagai and Paul Elliott -- were not targeted individually to the same extent that Schmidt was, but they were adversely affected by the repressive workplace atmosphere that the Company imposed in response to their protected group activities. In fact, when

B. The evidence establishes that Respondent retaliated against Schmidt when he was given a retaliatory performance review.

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The Review.

When reviewing a claim of retaliation under Title VII of the Civil Rights Act, the evidence is considered cumulatively. A single act may not, by itself, always amount to a violation of Title VII. However, that same act, when viewed in light of the surrounding circumstances, may prove quite significant in evaluating a retaliation claim. Here, a review of the circumstances surrounding the negative performance reviews received by Schmidt in 1998 and 1999 strongly supports an inference of retaliation that Respondent has failed to effectively rebut.

Schmidt alleges that the Company retaliated against him with inaccurate, unfair and punitive performance evaluations. As an example, Schmidt refers to a performance review dated March 12, 1998. At the time that this review was given, Schmidt and his coworkers believed that the review was a reprisal, and considered it to be "grossly inaccurate, unfair and punitive."

Referring to that performance review (in a document that wasn't available to the Commission's investigator), co-worker Kumagai notes that "one year, management lowered [Jeff's] rating from 'exceeds job requirements' to 'meets job requirements,'

management stepped up its repressive efforts, all three of these co-workers resigned in short order, after many years of employment with the Company. It is telling that Collins and Elliott left without even arranging other employment, and explicitly cited intolerable management practices by the Company. Kumagai arranged other employment before resigning, but attributes her resignation to the repressive/hostile environment imposed by management and to the Company's hypocrisy about equal employment opportunity.

despite the lack of evidence that the quality or quantity of Jeff's work had fallen. Jeff contended, and I agree, that they were punishing him for his workplace activism." See Exhibit C, page 5.

Schmidt's written rebuttal to the review proves that Schmidt's position at the time was that this review was a reprisal for Schmidt's protected activity. Never before during Schmidt's many years at the Company had he felt it necessary to write a rebuttal to a performance review. See Exhibit DoThis single act, when viewed in light of the surrounding circumstances, is significant evidence of retaliatory conduct.

The Commission's review of Schmidt's 1999 performance review unfortunately overlooks the evidence of reprisal. Significantly, the performance review criticizes as "unacceptable" the fact that Schmidt wrote and circulated to the staff a memo that "dwelled at length on issues not related to his job." The paramount issue that the memo addressed was the Company's discriminatory employment practices. Based on this criticism, the review gave Schmidt a very low rating in the area titled "Support the editorial effort of PT," that adversely affected his salary. And as the chronology notes, Schmidt's supervisor criticized him harshly for circulating the memo, telling him, "You are lucky you still have your job after doing that." See Exhibit A.

The letter of determination, on pages 3-5, quotes management statements in Schmidt's performance reviews at great length, and yet fails to evaluate the accuracy of the statements therein or the typical manner in which other employees were reviewed by the Company. The workload numbers and statements quoted are largely inaccurate, as

³ A rating of 1.5 in area 3

detailed, for example, in the document of April 27, 1998. These management statements should have been subjected to critical review in light of the document of April 27, 1998 and the performance reviews of co-workers.

Ah examination of the performance reviews of co-workers, for example, would reveal that a common management theme on performance reviews at the Company was, "What more can you do for us?" The Commission failed to appreciate this fact when it stated, "Investigation disclosed that Respondent has raised concerns regarding Complainant's productivity since before Complainant filed his internal Title VII based complaint." This observation misses an important point. The Company raised the issue of productivity for 19 years, but only took a "hard line" on it after Schmidt complained about all-white hiring practices. The performance review covering the period February 1996 - January 1997 illustrates how productivity had been treated in the past: as just one of many factors for judging an employee. Significantly, the review, dated February 13, 1997, was conducted two months before Schmidt confronted management about its failure to interview the minority job applicants whom management had identified as "very promising." Despite the fact that managers wrote that Schmidt failed to meet his productivity quota, they nevertheless gave him an overall rating of 4 -- "Exceeds job requirements." (See letter of determination, page 3, middle paragraph.)

Significantly, Title VII requires a finding of pretext where similarly situated employees are not subjected to the same adverse actions as the Title VII complainant. Here, the company clearly took different action with Schmidt than it did with other similarly-situated employees. Therefore, the Company's explanations for its adverse actions must be regarded as pretext.

For example, a look at the performance reviews of co-workers also would reveal that when the Company was *truly* concerned about an employee's productivity, it took action outside of performance reviews — by putting the employee on probation. Co-worker Bertram Schwarzschild, for example, was put on probation for low productivity. It is telling to compare the Company's treatment of Schwarzschild and its treatment of Schmidt. Schwarzschild's employment at *Physics Today* paralleled Schmidt's in starting date, job title and salary. The Company considered Schwarzschild's productivity to be deficient enough to warrant probation; Schmidt was never put on probation.

Schwarzschild openly spent office time on personal activities, including rehearsing lines for plays, making personal telephone calls, debating controversial current events at length with co-workers, writing fiction on his office computer, sending personal e-mail, surfing the Web, playing computer solitaire and so on; Schmidt devoted himself almost exclusively to the needs of the Company when he was in the Company's offices. Notably, however, Schwarzschild displayed a submissive attitude toward management and openly seethed with prejudices against minorities, women, gays and so on; Schmidt confronted management with demands for fair treatment of minority group members. Schwarzschild is still employed at *Physics Today*, Schmidt, of course, is not. Schwarzschild is allowed to count short "picture caption" stories as "big-ticket items" when it comes to meeting his annual work quota. ("Picture caption" stories take one to a few days to complete, whereas the "big-ticket items" take weeks.)

C. The evidence establishes that Respondent retaliated against him when the Company terminated his employment on May 31, 2000.

The letter of determination mistakenly concludes that the Company had no retaliatory motivation when it decided to fire Schmidt, whom the Company considered to be an unwelcome advocate for minority rights and had already tried to silence with an escalating series of repressive measures. Thus the Commission mistakenly accepts as free of pretext the Company's stated reason for firing Schmidt -- his supposed failure to "strive to meet Respondent's productivity standards." (See letter of determination, page 2.)

As stated before, at the time Schmidt was fired, he had just fulfilled his entire annual work quota two months ahead of time. The law provides in pertinent part, "Even if the Respondent produces evidence of a legitimate, nondiscriminatory reason for the challenged action, a violation will still be found if this explanation is a pretext designed to hide the true retaliatory motive." Yet, the Commission concludes that there was no violation.

The Commission's review of Schmidt's personnel file overlooks the most important document concerning the issue of productivity: the document that states the Company's productivity expectations that were in effect during the months leading up to Schmidt's dismissal. This document is a written agreement, approved by Schmidt and signed by a director of the American Institute of Physics, specifying the amount of work Schmidt would be required to do annually and what Schmidt would be paid in return for doing that work. (See agreement dated 14 September 1999, submitted to the Commission on 21 November 2000.) At the time Schmidt was fired, he had just fulfilled his entire annual work quota in ten months' time. That is, he was two months ahead in

his work. Clearly, alleged concerns about Schmidt's productivity cannot account for his dismissal.

Based on this fact alone, the Commission's finding was based upon the erroneous conclusion that Schmidt was actually fired for conduct that was unrelated to his protected activity. This finding is contradicted and undermined by the fact that co-workers with more serious productivity deficiencies were only put on probation and not fired, and the fact that Schmidt *exceeded* the Company's productivity standards, having completed a year's worth of work in ten months' time at the time of his dismissal.

The Company may defeat a finding of pretext only where the Title VII complainant is treated the same as similarly situated employees under like circumstances. Ample testimony by fellow co-workers to shew that such employees were not treated similarly. In fact, at the time Schmidt was writing the book, other co-workers were also engaged in freelance work that the company knew about. These coworkers were not disciplined in any way. See Exhibits F and G.

Significantly, the State of Maryland Department of Labor held a hearing in Schmidt's case and took testimony from both the Company and Schmidt. The Department found that the Company had presented insufficient evidence to back its charge that Schmidt had spent company time writing his book and refuted the Company's charge of employee misconduct. The Company did not appeal the State's finding.

Also significant are the findings of an investigation by a human rights committee of scientists, co-chaired by a professor at the University of Maryland, College Park. See

Exhibit C. The scientists determined, among other things, that "What is not possible is that Schmidt was fired for the reason stated by AIP." See Exhibit C, page 3.

The Commission's view that the Company's action was free of retaliatory motivation also contradicts the assessment of many organizations and hundreds of scientists with long-standing knowledge of the American Institute of Physics. These scientists know the subculture of physics, and they recognize a pretext within it when they see it.

The letter of determination's discussion of whether or not Schmidt was treated differently from other editors is fundamentally flawed, because it is based on a misreading of Schmidt's book and on the false assumption that the Company expected employees to spend 100 percent of their time doing Company work. (Pages 7-9 of the letter of determination.) The opening line of Schmidt's book is obviously a dramatization, and that is why he immediately explains to the reader what it means. Thus, in the book's opening paragraph, Schmidt states that "written in part on stolen time" means "spending some office time on my own work." (This is discussed on page 5 of Exhibit C.) The Commission confuses office time and Company time (or work time), and this confusion causes it to misinterpret all the statements by co-workers (most of page 8 of the letter of determination). During Schmidt's 19 years at the Company, it was common practice for employees in the Physics Today division to spend some of their time in the office on things other than Company work. Thus, while co-workers openly engaged in typical work-break activities such as making personal telephone calls, exchanging personal email, surfing the Web, conversing with co-workers and so on, Schmidt spent some time working on a book. No one needed formal permission to engage in any of these

activities, because they did not interfere with Company work, affect the amount of Company work that was done, or affect the timeliness of the Company work. In fact, most of Schmidt's company work was performed at home, on a computer that was purchased by Schmidt and the company and was wholly owned by Schmidt a year after the purchase. Schmidt typically spent four days every week at his home office. Thus, it is clear that Schmidt and other employees were treated as professionals and provided with the privileges of typical professionals. They were expected to complete their work and were not punching time clocks or strictly regulating their work hours. When taken in context, Schmidt's work on a book was entirely consistent with Company practices.

Finally, the Commission failed to accurately interpret the statements of many employees. For example, the letter of determination apparently makes a significant error in summarizing the statement of the former employee discussed in the middle of page 8. The letter says, "This witness stated that he did freelance work with Respondent's formal permission." In fact, this employee never told the Commission that he had written permission to do freelance work in the office. Nor did he tell the Commission that he had special permission not granted to his colleagues. He had a verbal statement of Company policy, that he understood to apply to all staff editors at *Physics Today*, including Schmidt. See Exhibit F.

This policy is further supported by the statement by former co-worker Christopher Mohr. See Exhibit G.

By failing to take into account the written chronology of events, the Commission unfortunately misses other ways in which Schmidt was treated differently from his coworkers after he confronted management on the issue of equal opportunity. For

example, Schmidt and a co-worker both requested permission to carry over unused vacation time from one year to the next. Schmidt's request was denied, while the co-worker's request was granted. The co-worker was instructed not to tell anyone. (See chronology entry of 9-10 November 1999.)

The fact that the Company never asked Schmidt about the statement in his book indicates a lack of interest as to the truth of the Company's purported assumptions. It is very telling that despite Schmidt's 19 years of service to the Company, his supervisors did not ask him even a single question about his work on the book, even though they had no idea how much office time, if any, he had spent on it. This is strong circumstantial evidence of an eagerness on management's part to get rid of Schmidt, an employee who had openly raised embarrassing questions in the workplace.

III. Conclusion

The Commission should reopen this case to consider the new, overlooked and challenged evidence, and should issue a complaint.

Respectfully submitted,

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EXHIBIT LIST

- 1. Exhibit A: Physics Today magazine workplace chronology, October 3, 2000.
- 2. Exhibit B: Contemporaneous letter detailing the ban on Schmidt's private conversations with co-workers, February 4, 1998.
- 3. Exhibit C: Scientists' human rights committee report, May 2002.
- 4. Exhibit D: 57-page memo of April 27, 1998.
- 5. Exhibit E: Documentation of probe into private conversations, August 1999.
- 6. Exhibit F: Message from witness William Sweet to PGC Human Relations Commission, May 9, 2002.
- 7. Exhibit G: Message from co-worker Christopher Mohr to PGC Human Relations Commission, May 15, 2002.

PHYSICS TODAY MAGAZINE WORKPLACE CHRONOLOGY

1980

Jeff Schmidt graduates in physics from the University of California, Irvine, and registers with the American Institute of Physics job placement service.

Early 1981

Physics Today Editor Harold L. Davis invites Schmidt to apply for a job at the magazine.

Late February 1981

Physics Today brings Schmidt from California to New York for an interview. American Institute of Physics associate director for publishing, Robert H. Marks, promises that Schmidt can go far by staying with AIP.

17 March 1981

Schmidt begins work at *Physics Today*, at the magazine's offices in the headquarters building of the American Institute of Physics, in New York City (Manhattan).

Within a year after beginning work

Management gives Schmidt a booklet that begins, "Welcome to the staff of the American Institute of Physics." The booklet gives examples of "an employee's own time": "meal periods, scheduled breaks, and time before or after a shift."

[American Institute of Physics Employee's Handbook, January 1982, page 16]

1981-2000

Bertram M. Schwarzschild, whose timeline of employment at *Physics Today* almost exactly parallels Schmidt's, openly spends company time on personal activities (rehearsing lines for plays, making personal telephone calls, debating topics at length with coworkers, writing fiction on his office computer, sending personal e-mail, surfing the Web, playing computer solitaire and so on), but is never fired. Schwarzschild's submissive attitude toward management and open seething with irrational prejudices against minorities, women, gays and so on contrasts sharply with Schmidt's attitude and behavior.

1981-2000, most years

Schmidt is given bonuses for perfect attendance.

1981-2000

Schmidt's work is praised by the authors of the articles he edits. Many of the authors are prominent physicists.

[Various letters]

1981-2000

Schmidt does work beyond that required by his job description. For example, he helps coworkers who write news stories and he researches possible feature article topics, proposes the articles at meetings and solicits them.

[Example: agenda for 20 January 2000 articles meeting]

S 000649

24 August 1983

D. Allan Bromley, the Yale University nuclear physicist and member of the White House Science Council who later became President George Bush's science advisor, praises Schmidt's editorial work on Bromley's *Physics Today* feature article. Bromley writes to *Physics Today* Editor Harold L. Davis: "I must tell you that Jeff Schmidt did an absolutely outstanding job in editing the paper I had prepared on Neutrons in Science and Technology for presentation at the 40th Anniversary of Fermi's First Reactor at the University of Chicago. I made no changes whatsoever in what he had done. You really do not know how unusual that is because, almost inevitably, I end up having giant hassles with editors who work over my papers. Let me then put in a very strong plug for Jeff."

Around 1988

Many *Physics Today* staff members oppose the firing of secretary Ruth Viera by *Physics Today* Editor Gloria B. Lubkin. Speaking for the spirit of the concerned staff, Schmidt protests to Lubkin, who drove Viera to a kind of nervous breakdown. Against Lubkin's wishes, Schmidt and many coworkers meet with Viera in the days after her firing.

27 March 1991

Schmidt is promoted from Associate Editor Level I to Associate Editor Level II based on the quantity and quality of his work.

27 July 1993

Schmidt is promoted from Associate Editor Level II to Senior Associate Editor based explicitly on the quantity and quality of his work.

[Document dated 17 February 1993; memorandum dated 27 July 1993]

October 1993

Physics Today moves from New York City to College Park, Maryland. The company moves Schmidt from New York City to Washington, D.C., on 1 November 1993.

20 December 1993

Stephen G. Benka starts work at *Physics Today* as an associate editor, a non-management position. Nine months later he is appointed Editor of *Physics Today*.

4 January 1994

Denis Cioffi and Ray Ladbury begin work as editors at Physics Today.

22 or 24 February 1994

Charles Harris begins work as publisher of *Physics Today*, a newly created position higher than Editor.

1994

Physics Today publisher Charles Harris authorizes Schmidt to work at home, in Washington, D.C., one day per week.

24 October 1994 S 000650

Physics Today managing editor Kenneth J. McNaughton pursues a personal 200-page journal editing project in part on office time and sends by Federal Express at company expense a heavy package associated with that project.

[Cover letter dated 22 October 1994 and sent 24 October 1994 from McNaughton to Ablex Publishing Corporation; Ken McNaughton, guest editor, *Creativity Research Journal*, Volume 7, numbers 3 and 4, 1994]

Beginning around 1995

Physics Today Editor Stephen G. Benka behaves abusively toward individual staff members, repeatedly blowing up at them, yelling at them. In one incident, Benka angrily follows *Physics Today* staff member Graham Collins out of the office, out of the building and into the parking lot.

Around 1995 to 2000

The American Institute of Physics recognizes that newly appointed *Physics Today* Editor Stephen G. Benka is deficient as a manager and requires him to attend management training classes over a long period of time.

1995-2000

Physics Today Editor Stephen G. Benka praises Schmidt's work repeatedly. [Various documents]

25 May 1995

Schmidt tells Benka that Benka has failed to provide him with an adequate amount of work (articles to edit) and that this is a chronic problem that limits the number of articles Schmidt can edit per year.

[25 May 1995 memorandum from Schmidt to Benka]

26 May 1995

Schmidt notes that Benka provided him with no work for an entire week (23 May 1995 to 30 May 1995) and that this is the third time in the past 11 weeks that Benka has let Schmidt run out of work.

[Note of 26 May 1995]

Around 8 March 1996

Physics Today publisher Charles Harris meets with Schmidt to discuss management's draft review of Schmidt's job performance. Harris decides to raise Schmidt's job performance rating from "Meets Job Requirements" to "Exceeds Job Requirements." Harris notes in a tone of regret that this change will make it harder for the company to get rid of Schmidt. Schmidt asks what Harris means. Harris explains that should the company decide to get rid of Schmidt, it would now take at least a year longer to do so, because it can't credibly lower its view of an employee's performance abruptly. (Harris says nothing to suggest that he plans to shift from the carrot to the stick in dealing with Schmidt.)

14 March 1996

Schmidt's 1996 performance review says he edited 16 articles and gives him a rating of "Exceeds

Job Requirements."

The review says, "His comments in meetings often provide a useful counterpoint to discussions," and "His comments and views on editorial ideas and policies, while sometimes contrarian, are generally insightful."

[Performance review dated 12 March 1996]

11 July 1996

American Institute of Physics personnel office employee Melinda Underwood informs personnel director Theresa C. Braun that in 1995, AIP employment was deficient at the following levels and in the following ways:

- Senior managers (101): Female and minority underutilization
- Senior professionals (201): Female underutilization
- Other professionals (202): Minority underutilization
- [11 July 1996 memo from Underwood to Braun]

22 July 1996

Schmidt is short of work because *Physics Today* Editor Stephen G. Benka has failed to solicit sufficient articles for the magazine. Schmidt writes a note to Benka asking for work. [Note of 22 July 1996]

4 October 1996

The only minority on the Physics Today staff is also the most underpaid employee. On behalf of staff members who have been pushing for pay equity at *Physics Today*, Schmidt tells the *Physics Today* advisory committee, at their annual meeting, that the large salary differentials among the staff are not only unfair, but also divisive and bad for morale and productivity. Schmidt raised this issue at various staff meetings as well. Management is not pleased by the pressure, in part because it forces them to give the minority employee, Jean A. Kumagai, a special 25% salary increase, beginning on 1 June 1997.

15 November 1996

The *Physics Today* advisory committee issues a report strongly critical of working conditions at the magazine.

[Committee report e-mailed to staff by Benka 15 November 1996]

15 November 1996

Schmidt and some coworkers, after discussions with many more coworkers, give *Physics Today* managers and staff a list of changes that they want made at the *Physics Today* workplace. They present their requests in the form of a proposed agenda for a two-day retreat scheduled for 19–20 November 1996. Fearing reprisals for making requests that might not please management, those involved do not disclose their names; however, the fact that Schmidt played a leading role is known to all. One item calls upon the company to change its hiring practices to "increase diversity of *Physics Today* staff."

[Document of 15 November 1996]

S 000652

In response to a request for greater job security by a group of concerned staff members, *Physics Today* Editor Stephen G. Benka promises the entire staff that job security will be based on job performance. This is a change from the magazine's previous policy of "at will" employment, in which employment could be terminated for any reason.

[Document of 15 November 1996; 17 November 1996 statement by Benka]

26 November 1996

Schmidt and Jean Kumagai get *Physics Today* Editor Stephen G. Benka to send the current job opening announcement to three minority group organizations.

27 November 1996

Schmidt and Jean Kumagai update the *Physics Today* staff on the status of affirmative action efforts related to the current job opening.

Beginning around 1996

Physics Today publisher Charles Harris makes it clear to Schmidt and to many other staff members that their concerted activities have infuriated him.

After late 1996

There is a turning point in management's attitude toward Schmidt, a distinct and permanent change in management's tactics in dealing with Schmidt, a shift from trying to incorporate Schmidt into the decision-making process to trying to exclude him, a shift from the carrot to the stick. *Physics Today* publisher Charles Harris is no more Mr. Nice Guy.

Management's anger at Schmidt increases dramatically, and never subsides, when he works with Jean Kumagai and other staff members to assert the need for equal opportunity and affirmative action in hiring at *Physics Today*, to increase staff diversity. They raise the issue when Ray Ladbury leaves the magazine in late 1996, creating an opening on the editorial staff. Schmidt speaks out strongly on the issue over a long period of time, as Ladbury's position isn't filled until 6 May 1997.

3 January 1997

Schmidt tells Benka that Benka has failed to provide him with an adequate amount of work (articles to edit) and that this is a chronic problem that limits the number of articles Schmidt can edit per year.

[3 January 1997 note from Schmidt to Benka]

13 February 1997

Schmidt's 1997 performance review says, "He edited 15 feature articles in this period, one shy of his agreed upon goal of 16." Schmidt is given a rating of "Exceeds Job Requirements."

The review says, "His comments in meetings often provide a useful counterpoint to discussions," and "His comments and views on editorial ideas and policies are generally insightful." [Performance review dated 13 February 1997]

April 1997 S 000653

To fill the position vacated by Ray Ladbury, *Physics Today* brings in three applicants for interviews. All are white males: Charles Day, David Ehrenstein and Corby Hovis.

Around late April 1997 (after the three white males are interviewed)

Schmidt argues strongly at a staff meeting that promising minority applicants be interviewed for the open position. *Physics Today* publisher Charles Harris and Editor Stephen G. Benka say no.

6 May 1997

Physics Today Editor Stephen G. Benka announces that the magazine has hired Charles Day to fill the position vacated by Ray Ladbury.

Benka says that after filling the position, he phoned six "very promising" applicants, mainly members of minority groups, to tell them that he will consider them for future openings. Even though these minority applicants were "very promising," none of them were brought in for interviews.

[Benka's e-mail message of 6 May 1997]

2 June 1997

Charles Day, Ray Ladbury's replacement, begins work.

Around 25 July 1997

Schmidt begins working at home, in Washington, D.C., three or four days per week.

18 August 1997

Schmidt writes to Benka about the chronic shortage of work (articles to edit). He asks Benka for more articles to edit. (Benka responds defensively, as providing the work is his job.) [Memos of 18 August 1997, 19 August 1997, 25 August 1997, 2 September 1997]

19 August 1997

Benka surreptitiously changes Schmidt's job description to make it look like Schmidt is partly responsible for providing the work that Benka is supposed to provide but has been deficient in providing.

25 August 1997

Schmidt discovers Benka's surreptitious change in Schmidt's job description and agrees to the change because it shifts Schmidt's work from an area in which Benka has been deficient in providing work to an area in which work is available. Schmidt makes Benka write a note saying that Schmidt's job description has been changed. The new job description changes Schmidt's article editing quota from 16 per year to 14 per year.

[Note of 25 August 1997]

25 September 1997

Near the beginning of a staff retreat, Schmidt asks if staff members may ask questions. *Physics Today* publisher Charles Harris says no. Schmidt argues that staff members *should* be allowed to ask questions at a retreat. Harris angrily shouts "No, That's an order!", ending the discussion.

At the retreat itself, and in subsequent weeks, a number of Schmidt's coworkers publicly criticize Harris for the way in which he shut Schmidt up. A number of staff members — Graham Collins, for example — consider resigning.

Some days after the retreat, Harris tells Schmidt that he thought Schmidt's request for the right to ask questions was a disguised attempt to raise issues of staff concern.

1 October 1997

Gag order put on Schmidt. *Physics Today* publisher Charles Harris and Editor Stephen G. Benka hand Schmidt a written "notice" that implies that Schmidt will be fired the next time he says anything that management considers to be "counterproductive." The notice also orders Schmidt not to tell his coworkers that he is under this restriction.

[Document dated 26 September 1997.]

15 October 1997

In a written statement to the *Physics Today* staff, publisher Charles Harris says that "the staff should be free to engage in constructive criticism and discussion without fear of retribution" and promises that "while we can't guarantee life employment,... continued employment is based on satisfactory performance."

[Statement of 15 October 1997]

17 October 1997

Schmidt and a group of coworkers, in a written grievance presented to the *Physics Today* advisory committee at its annual meeting on 17 October 1997, ask for relief from "the increasingly repressive work environment at the magazine." The appeal describes how *Physics Today* staff members Jeff Schmidt and Graham Collins have been warned about speaking up about workplace problems. It says, "Both Jeff and Graham have been outspoken about problems that many of us see at the magazine. We feel that the [gag orders on them] contribute to a repressive atmosphere at the magazine and restrict all of us."

Schmidt meets with the committee privately and, on behalf of concerned *Physics Today* employees, objects to the magazine's discriminatory employment practices and failure to live up to its claim that it is an affirmative action employer.

In the weeks and months following 17 October 1997

Physics Today publisher Charles Harris harshly criticizes Schmidt for his leading role in the presentation of staff concerns to the *Physics Today* advisory committee on 17 October 1997, telling Schmidt and others incorrectly that Schmidt tried to get him fired. Harris makes it clear that he sees Schmidt's actions as an unforgivable offense that obligates Harris as a matter of manly honor to fire Schmidt or eventually drive him out and that gives Harris the moral right to do that by any means.

24 October 1997

American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky, Schmidt's boss's boss's boss's boss's boss, accuses Schmidt of making "a very, very serious charge" about *Physics Today*'s hiring practices. Brodsky demands that Schmidt bring him the evidence.

[Extensive notes available.]

24 October 1997

Gag order put on Graham Collins. *Physics Today* management lets staff know that problems are to be discussed with managers on an individual basis only. This is communicated to the staff through a warning to Graham Collins and in other ways.

Collins sends an e-mail message to the non-management *Physics Today* staff with the subject line: "My coming silence."

[24 October 1997 e-mail from Collins]

4 November 1997

Schmidt and Jean Kumagai work together to prepare the document on equal employment opportunity and affirmative action that Schmidt will give to American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky on 5 November 1997. [4 November 1997 e-mail from Kumagai to Schmidt]

5 November 1997

Schmidt meets with American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky for one hour and gives Brodsky a written statement summarizing *Physics Today*'s discriminatory hiring practices and lack of promised affirmative action. [Two-page document dated 5 November 1997; extensive notes from meeting available]

Schmidt tells Brodsky that AIP failed to conduct the equal employment opportunity and affirmative action training that it promised the federal government it would conduct. AIP made that promise in its 284-page "1996 Affirmative Action Program for American Institute of Physics," a document signed by Brodsky and filed with the federal government at the government's request.

[Pages 44–45 of the 284-page document (Schmidt's page numbering)]

Brodsky counters by saying that he is pretty sure that he mentioned affirmative action either at the one-hour question-and-answer session that he held at AIP headquarters on 20 June 1996 or at the Q&A meeting that he conducted for employees at AIP's facility in Woodbury, New York. He indicates that this mention (which, in fact, did not occur at the headquarters meeting) was the promised equal employment opportunity and affirmative action "training."

Brodsky promises to look into affirmative action at *Physics Today* and tell Schmidt what he finds.

7 November 1997

Schmidt suggests that American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky speak with *Physics Today* staff member Jean Kumagai about discrimination and affirmative action at the magazine. Kumagai, the only member of a minority group at *Physics Today*, has been concerned about the issue and has been working on it. Brodsky fails to contact Kumagai.

[7 November 1997 e-mail message from Schmidt to Brodsky]

S 000656

Around 13 November 1997

Coworkers force management to rescind the gag orders on Schmidt and Graham Collins. The gag orders had outraged many coworkers, most of whom were afraid to speak out on their concerns but valued Schmidt and Collins doing so for them. Many staff members openly criticized the gag orders, forcing *Physics Today* publisher Charles Harris, at the November 1997 monthly staff meeting, to agree to rescind them. Harris does so reluctantly and without any decrease in his anger toward Schmidt and Collins.

[E-mail message of 1 December 1997.]

2 December 1997

Management rescinds the gag orders on Schmidt and Graham Collins. [E-mail messages of 2 December 1997.]

19 January 1998 — Martin Luther King holiday

American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky tells Schmidt that he is still looking into the equal employment opportunity and affirmative action issues that Schmidt raised. Schmidt answers on behalf of the concerned staff, saying, "We'll stay tuned."

[19 January 1998 e-mail messages between Brodsky and Schmidt]

22 January 1998

Schmidt appeals to *Physics Today* publisher Charles Harris for relief from the pressure to take on additional (clerical) work. Harris says he is not inclined to give Schmidt any consideration, because of Schmidt's and Graham Collins's previous-year organizing activity, which Harris says is a threat to Harris's own job.

[4 February 1998 letter from Schmidt to Collins]

28 January 1998

Physics Today Editor Stephen G. Benka breaks up two conversations between Schmidt and coworker Toni Feder after working hours.

Benka bans private conversations in the workplace, saying that all conversations between staff members must be open to monitoring by management.

When Schmidt asks Benka why, Benka refers to the organizing activity that took place the previous year and says he doesn't want that to happen again.

Management's disruptions of the two Schmidt/Feder conversations on 28 January 1998 and ban on future private conversations appear to be aimed specifically at Schmidt even though Benka says the rule applies to all employees.

[4 February 1998 letter from Schmidt to Collins]

Shortly after 28 January 1998

News of management's dislike of private conversations in the workplace spreads quickly throughout the staff (by way of private conversations) and puts a chill on everyone's expression.

18.

Paul Elliott complains to *Physics Today* publisher Charles Harris about the ban on private conversations between staff members. Harris takes no action.

20 March 1998

American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky meets with Schmidt and tells Schmidt that Brodsky investigated *Physics Today*'s hiring practices and found that the magazine's affirmative action program was doing very well. Brodsky explains that he judges the program by its results. At the time, *Physics Today* has an all-white staff of 18 employees, with only one exception.

Schmidt asks Brodsky again (as he did on 5 November 1997) about the equal employment opportunity and affirmative action training that Brodsky promised the federal government that AIP would conduct. After extensive questioning by Schmidt, Brodsky says that his supposed mention of the issue at the Q&A meetings constituted only "part of" the promised training. Schmidt then asks Brodsky to do "the rest of the training." Brodsky very reluctantly promises to look into it, but such training is never conducted.

At the end of the meeting, Schmidt tells Brodsky that Schmidt and the other concerned *Physics Today* staff members still believe that their concerns about the lack of diversity in *Physics Today*'s hiring are well founded, and that the concerned staff are therefore disappointed with Brodsky's response. Brodsky's apparent view of the upshot of what happened is that Schmidt leveled totally unfounded charges at AIP, and Brodsky is not happy about that. [Notes of 20 March 1998 meeting available]

20 March 1998

During Schmidt's meeting with American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky about staff concerns about discrimination and lack of affirmative action in hiring at *Physics Today*, Brodsky tells Schmidt that some of Schmidt's workplace activities, presumably reported to Brodsky by *Physics Today* publisher Charles Harris, are "counterproductive."

[Notes of 20 March 1998 meeting available]

24 March 1998

Schmidt meets with *Physics Today* Editor Stephen G. Benka to discuss his 1998 performance review. Benka condemns Schmidt's organizing activities at the magazine, focusing in particular on Schmidt's leading role in the concerted activity around the 19–20 November 1996 *Physics Today* retreat, even though that activity occurred before the period covered by the review. Part of that activity aimed at changing *Physics Today*'s hiring practices to "increase diversity of *Physics Today* staff."

Benka characterizes the staff actions in which Schmidt has played a leading role as nothing more than "disruptive." Benka says: "You have spent a lot of time in, shall we say, disruptive efforts."

This meeting is the first performance review discussion in which Benka criticizes Schmidt for his organizing activities around the 1996 retreat. Benka strongly condemns this 1996 concerted

activity, in which staff members anonymously proposed an agenda that addressed their concerns. Benka calls the group of staff members who did this "your cabal." He calls them "people who wouldn't step forward," but he talks as if he has no doubt that Schmidt was not only one of them, but also a leading member. Referring to the group's efforts to get its concerns discussed, Benka warns Schmidt: "Anything — any behavior that generates such feelings, such divisions, such divisiveness, such disruption among the staff — is not going to be tolerated anymore."

Schmidt tells Benka that staff members fear reprisal for speaking out about workplace problems. Benka responds: "Now, why would they fear that? If they're acting in good faith, then why would they fear it? But if they're not acting in good faith, they may have reason. If they're acting in order to engender divisiveness and trouble, if they're acting in bad faith, they may have reason to fear." Benka adds: "If they're that afraid, maybe they should go where they're less afraid — if it's that unbearable."

The performance review lowers Schmidt's performance rating from "Exceeds Job Requirements" to "Meets Job Requirements" even though Schmidt did more work and more innovative work. The review makes what it admits are "new demands," which amount to a sharp increase in Schmidt's workload — from 14 feature articles per year to 18 — a 28 percent jump.

Schmidt: "I don't know of any others who have been asked to increase the amount of work they do."

Benka: "Oh yes they have" [repeats this a few more times].... I don't know why it's taken this long to ask you to increase as well."

Schmidt asks Benka to make corrections in the review. After consulting with *Physics Today* publisher Charles Harris, Benka refuses to make any changes in the review.

In its employee handbook, the American Institute of Physics promises employees that their annual performance review will feature a discussion of "mutual goals." Without explanation, Benka follows neither the letter nor the spirit of this policy, and doesn't even pretend to be interested in what direction Schmidt might want to go in his work at AIP. The discussion is unlike anything Schmidt had experienced in previous years. Benka simply announces a big change in Schmidt's job description — an increase in Schmidt's workload by as much as three months' worth of work per year — and discusses it as if he were a dictator giving orders. Rather than follow the participatory process promised in the employee handbook, management changes Schmidt's job description by unilateral dictate, without discussion or agreement.

[Notes of 24 March 1998 meeting available]

24 April 1998

Schmidt's fellow outspoken coworker Graham Collins leaves *Physics Today*. In explanation of the dissatisfaction that drove him to resign, Collins tells the American Institute of Physics that "Marc Brodsky [AIP executive director and chief executive officer] wishes to believe that the only problems are employees who complain too much."

[Collins's exit interview form, 24 April 1998]

Schmidt appeals his 1998 performance review to American Institute of Physics director of human resources Theresa C. Braun and director of physics programs James H. Stith. The appeal details some of the ways in which the review is inaccurate and explains how it is a reprisal for Schmidt's organizing activity and is part of a series of attempts to stop him from engaging in further concerted activity at *Physics Today*. The appeal puts greatest emphasis (more than 13 pages) on the issue of discrimination in employment and lack of promised affirmative action at *Physics Today*. Schmidt shows his appeal to 12 coworkers.

[Document dated 27 April 1998]

30 April 1998

The American Institute of Physics formalizes its computer use policy, saying that it "makes its computer equipment available to employees for personal use" on a causal basis for non-commercial purposes such as "educational, recreational, hobby, and community service." [18 June 1998 memorandum from Marc H. Brodsky to all AIP employees]

25 June 1998

Schmidt meets for two hours with American Institute of Physics director of physics programs James H. Stith about Schmidt's 1998 performance review appeal. Stith refuses to make any corrections at all in Schmidt's 1998 performance review.

Stith does not defend the review's criticisms of Schmidt, nor does he dispute Schmidt's detailed claim that the review makes many false statements about Schmidt. Stith says he decided to leave these statements in the review (and thus in Schmidt's permanent personnel record) because he had talked to *Physics Today* managers Charles Harris and Stephen G. Benka, who told him other things about Schmidt — things not mentioned in the review — and these things justified the lowering of Schmidt's job performance rating. Despite vigorous questioning by Schmidt, Stith refuses to say what these things are. However, Stith makes it clear that the problem is Schmidt's organizing activity, just as Schmidt had claimed in his appeal. Stith tells Schmidt that when you do things that your supervisors would be happier that you not do, then you have to be willing to pay the penalty, even if what you do is right. Schmidt responds that he expects Stith to protect people from being punished for doing the right thing. But Stith makes it clear that he will not play that appellate role at AIP. Stith says that in his younger days, he challenged the status quo. He says that even after the status quo yielded to change, he still had to pay a price for his actions, implying that paying such a price was right.

Schmidt appeals the ban on private conversations in the workplace to Stith. Stith tells Schmidt he knows about the ban, which was described in Schmidt's 27 April 1998 performance review appeal. Schmidt asks Stith to retract it. Stith promises to look into it, but never lifts the ban. [Stith's memo of 24 June 1998; notes of 25 June 1998 meeting available]

20 August 1998

Schmidt meets with American Institute of Physics director of physics programs James H. Stith about Schmidt's 1998 performance review. Stith admits repeatedly that the performance review was "subjective," but he refuses to put that in writing. [Notes of 20 August 1998 meeting available]

S 000660

23 September 1998

Schmidt notes in an e-mail message to a coworker that *Physics Today* Editor Stephen G. Benka has failed to provide him with an adequate amount of work (articles to edit) and that this is a chronic problem.

[23 September 1998 e-mail message to coworker]

6 October 1998

Physics Today publisher Charles Harris, in a conversation with Schmidt, criticizes the management abilities of Physics Today Editor Stephen G. Benka and tells Schmidt that Harris is going to take away Benka's right to issue performance reviews and memos concerning personnel matters on his own. Harris will have to approve all such material before it is issued.

[6 October 1998 note written on memo of 1 October 1998]

Mid-December 1998 to mid-June 1999

Schmidt takes a six-month unpaid leave of absence.

Around 2 March 1999

Physics Today publisher Charles Harris is fired.

Mid-June 1999

Physics Today Editor Stephen G. Benka criticizes Schmidt harshly (and for the first time, even though it has been 14 months since it happened), for showing his 1998 performance review appeal to coworkers. That document reviews workplace issues, focusing most closely on the issue of discrimination in employment and lack of promised affirmative action at Physics Today. Benka says, "You are lucky you still have your job after doing that."

29 June 1999

In response to the sharp increase in his workload imposed by management, Schmidt asks to work on a 2/3-time basis, writing in his request that "after all these years, at my age, I am not prepared to take on additional work."

[Memo of 29 June 1999]

9 August 1999

Benka tells Schmidt that his request to work 2/3 time has been approved and will take effect 20 September 1999.

17 August 1999

Schmidt is given an inaccurate and punitive 1999 performance review covering February 1998 to August 1999.

The review says, "During this review period, Jeff repeatedly engaged in disruptive and counterproductive behavior, damaging a collegial office climate and thereby undermining the editorial effort of *Physics Today*. Such behavior is unacceptable." An example of such behavior, according to the review, is Schmidt's showing coworkers his 1998 performance review appeal — the document that focuses most closely on the issue of discrimination in employment and lack of promised affirmative action at *Physics Today*. The 1999 review criticizes and punishes Schmidt

for this communication with coworkers. It says that such communication serves to "undermine...the staff's respect for management."

[Performance review dated 13 August 1999; Schmidt's 19 August 1999 comments on the review; Benka's 19 August 1999 response to Schmidt's comments]

19 August 1999

Schmidt meets with Benka about his 1999 performance review. Benka admonishes Schmidt for talking to coworkers about the punitive review, which Benka wanted to keep secret. Benka verbally demands that Schmidt tell him which coworkers Schmidt has spoken with about issues raised in Schmidt's 1999 performance review. Schmidt refuses. Benka insists. Schmidt says he will ask the coworkers for permission. (In an e-mail message later the same day, Benka says, "I still would like you to tell me which member or members of the staff you have discussed this year's review with.") Benka says he is concerned about Schmidt talking to coworkers because Schmidt has a lot of influence in the workplace. Soon after Benka's 19 August 1999 demands, Schmidt and coworkers confer and decide how to respond to Benka.

[Notes on 19 August 1999 meeting available]

26 August 1999

Schmidt reports to Benka that Schmidt and coworkers decided that Schmidt should not reveal any names to Benka or give Benka anything that Benka could use to try to identify which staff members are involved in private discussions. Schmidt and coworkers decided that Schmidt should give Benka only a verbal report on their views, based on notes that they agree on. Schmidt does that, but Benka then demands that Schmidt give him the notes, too. [Notes of 26 August 1999.] Schmidt refuses but agrees to consult again with coworkers. Schmidt and coworkers decide that Schmidt will give Benka a brief, agreed-upon written report, which Schmidt does.

Benka states his opposition to private conversations between staff members, saying that everything is in his domain. Schmidt, speaking on behalf of many staff members (those he consulted), defends private conversations.

[Notes on 26 August 1999 meeting available; memo dated 30 August 1999]

26 August 1999

Schmidt and Benka agree to change Schmidt's job description back to 80 percent article editing.

17 September 1999

Schmidt and the American Institute of Physics enter into an agreement specifying the amount of work Schmidt will do and what he will be paid in return for doing that work. The written agreement is approved by Schmidt and signed by a director of the American Institute of Physics (James H. Stith).

[Document dated 14 September 1999]

20 September 1999

Schmidt begins 2/3-time work with full benefits.

S 000662

24 November 1999

Jean Kumagai leaves *Physics Today*, in part because of *Physics Today*'s discriminatory practices and affirmative action hypocrisy. Kumagai was widely considered to be one of the best editors at the magazine. She was one of Schmidt's partners in concerted activity.

24 November 1999

Jean Kumagai's 24 November 1999 departure leaves *Physics Today* with an all-white professional staff (editors and writers) and an all-black staff of secretaries.

9-10 November 1999

Schmidt requests permission to either use his accumulated vacation time or carry it over to the year 2000; his request concerns only the amount of vacation time beyond the amount that is automatically carried over to the next year. (Verbal request 9 November 1999; written request 10 November 1999.) Management doesn't respond for a full month, giving vacation-use permission on 10 December 1999, which does not leave enough time in the year for Schmidt to plan and use all the vacation time. Management's response is partial, saying that the issue of carryover will be addressed later. After many written communications with Schmidt and two meetings with him over a period of a few months, management makes Schmidt forfeit much of his vacation time. Also, without Schmidt's knowledge and without notification, the amount of vacation time that he is allowed to carry over automatically (to the year 2000) is lowered to 175 hours from 262.5 hours the previous year; Schmidt discovers this after the fact, when he sees his earnings statement of 15 January 2000.

Schmidt's coworker Paul Elliott is in an identical situation and makes an identical request exactly one week after Schmidt's 10 November 1999 request. However, management allows Elliott to carry over to the year 2000 all of his unused vacation time — but makes him promise not to tell his coworkers.

After Schmidt is fired, he is paid for his remaining vacation time, which does not include his forfeited vacation time. He is paid for only two of the total of four "personal days" and "bonus days" due him.

[E-mail messages of 10 November 1999, 23 November 1999, 13 December 1999, 15 December 1999, 5 January 2000, 13 March 2000, 15 March 2000, 16 March 2000, 28 March 2000, 6 April 2000, 11 April 2000; note of 9 November 1999; memoranda dated 10 December 1999, 3 April 2000; notes of 15 March 2000 meeting with Nanna available, notes of 5 April 2000 meeting with Nanna and Benka available]

5 April 2000

Schmidt meets with *Physics Today* publisher Randolph A. Nanna and Editor Stephen G. Benka about vacation carryover. When Schmidt objects to AIP's decision to make him pay for AIP's admitted mistake, Nanna says, "And that's my opinion [too]. Would I like it done to me? Probably not."

[Notes of 5 April 2000 meeting]

5 April 2000

In the course of Schmidt's meeting with *Physics Today* publisher Randolph A. Nanna and Editor Stephen G. Benka about vacation carryover, Benka praises Schmidt's job performance in

glowing terms: "You're editing at a level that I find very good. At a level, frankly, I haven't seen from you before. It's terrific."
[Notes of 5 April 2000 meeting]

Around or just after mid-May 2000

Schmidt and coworker Toni Feder are talking alone in the *Physics Today* art office when *Physics Today* Editor Stephen G. Benka enters the room and points out to them that he noticed that they stopped talking when he showed up.

22 May 2000

Schmidt's immediate supervisor, *Physics Today* Editor Stephen G. Benka, learns of Schmidt's book, *Disciplined Minds*, when Benka comes upon a *Physics Today* staff member reading an article about it in the "Hot Type" column of the 26 May 2000 issue of the *Chronicle of Higher Education*.

30 May 2000

Historian Spencer Weart, director of the American Institute of Physics Center for History of Physics, reviews *Disciplined Minds* and sends his comments to Schmidt. Weart gives the book a very positive review and approves it for inclusion in the physics community section of the Niels Bohr Library, a specialized collection with limited space.

Schmidt distributes Weart's review to all *Physics Today* staff and management. [30 May 2000 e-mail from Weart to Schmidt and 30 May 2000 e-mail from Schmidt to *Physics Today* staff and management]

Around 31 May 2000

Schmidt fulfills his entire annual review-period work quota in the first 10 months of the period. That is, he is two months ahead in his work.

31 May 2000, morning

Physics Today fires Schmidt.

31 May 2000, afternoon

Physics Today Editor Stephen G. Benka goes from office to office at Physics Today, telling each staff member that American Institute of Physics executive director and chief executive officer Marc H. Brodsky authorized him to say why Schmidt was fired. Benka tells people that Schmidt was fired for doing something other than what he was paid to do.

9 June 2000

The Chronicle of Higher Education reports Physics Today's firing of Schmidt.

9 June 2000

Schmidt's long-time *Physics Today* coworker Bert Schwarzschild, in a telephone call to Schmidt, details Schwarzschild's use of office time and details his annual workload. The amount of break time Schwarzschild takes is very much greater than the two 15-minute breaks specified in the employee handbook, and his annual workload is significantly less than Schmidt's, because

management counts his short "picture caption" stories as "big-ticket items." [Notes available]

12 June 2000

The National Writers Union protests *Physics Today*'s firing of Schmidt. [Union press release of 12 June 2000]

15 June 2000

Journalist Marlowe Hood, a former *Physics Today* staff member who was involved in concerted workplace activity with Schmidt, protests the firing of Schmidt.

Before 16 June 2000

Physics Today charges Schmidt with misconduct, telling the State of Maryland Department of Labor, Office of Unemployment Insurance, that "The employee admittedly used company time to work on a personal project over an extended period of time."

16 or 19 June 2000

Physics Today tells Maryland Department of Labor, Office of Unemployment Insurance, claim examiner Tasha Owens, as evidence that Schmidt was writing the book on company time, that Schmidt had asked for reduced hours.

20 June 2000

Regarding Schmidt's request to work reduced hours, state examiner Owens tells Schmidt that the company "did not specify why you needed that time." According to the company, said Owens, "you didn't say what it was for; you just asked for reduced hours. And that they granted you the request." Owens tells Schmidt that the company "could not say what hours you spent doing the book. They don't know."

21 June 2000

Sixteen former *Physics Today* staff members, including many who were involved in concerted workplace activity with Schmidt, protest the firing of Schmidt.

24 June 2000

Princeton University physicist M. V. Ramana protests Physics Today's firing of Schmidt.

26 June 2000

Physicist Kajoli Krishnan protests Physics Today's firing of Schmidt.

26 June 2000

George Washington University management professor Denis Cioffi, a former *Physics Today* staff member who was involved in concerted workplace activity with Schmidt, protests firing of Schmidt.

26 June 2000

George Washington University expert systems professor Thomas Nagy protests firing of Schmidt.

26 June 2000

State of Maryland Department of Labor, Unemployment Office, issues its determination, finding no evidence that Schmidt engaged in even simple misconduct on the job by writing *Disciplined Minds*. The state awards Schmidt full benefits, retroactive to 4 June 2000. *Physics Today* does not appeal the state's finding.

28 June 2000

Physicist Vikram Vyas protests Physics Today's firing of Schmidt.

30 June 2000

Physicist Surendra Gadekar protests Physics Today's firing of Schmidt.

5 July 2000

Chris Garlock, editor of the online newsletter of the Washington, D.C., local of the National Writers Union, notes that physicist Albert Einstein wrote the theory of relativity in part during his spare time at the Swiss patent office, where he was employed.

Excerpt from a letter to a covorker on vacation describing the ban on private conversations between Physics Today staff members
4 February 1998

Hi Graham,

It sounds like you are in a great place, a different world physically and in spirit. News travels far and fast, and so I see that you already know that your coworkers have been treated to a "down under" experience of a very different sort. The description of events that you received was a good one, in my opinion, and shows the skills of a good reporter. I'll give you my report here, because it contains some additional information.

On Thursday 22 January 1998 I met with Charles Harris to ask him to get Stephen Benka off my case. Benka had been pressuring me to stop doing anything that takes up any support staff time at all. I told Harris that support staff can contribute a lot to making the editorial work go well, and that his apparent new policy for support staff work -that it should give priority to advertising and other revenue-producing work over editorial work -- was bad for the magazine. When Judy was part of the support staff, most of her time was shifted to the Buyers' Guide, which was brought in-house to save money. Now they are shifting more and more of Rita's time to advertising work. And they aren't replacing the lost editorial support. Instead, they are pressuring editorial staff to take on more work. Management philosophy seems to be: Why pay \$15 an hour for clerical work when you can pay \$30? Their real philosophy, of course, is simply to get the editorial staff to do more.

I told Harris that behind all this is the way his salary is structured -- tied to reducing the magazine's budget deficit. To my claim that his salary structure is distorting our priorities, he said that he doesn't always do what is best for his salary. As proof, he pointed out that we usually don't run four feature articles in the magazine. He then quickly changed the subject, realizing, I think, that he has never revealed that his salary is tied to upping our output to four articles per month. By the way, over my objection (and over Bert's indication of support for my objection), they are running four substantial feature articles in the March issue, even though we have no backlog and no additional staff. The other day Harris broke new ground in his privileging of advertising over editorial by bringing his advertising manager to an editorial meeting and letting the needs of advertising set the agenda. They forced the meeting to make a big editorial decision after very little discussion, for the sake of advertising. Warren objected strongly; Gloria called it "bullying."

Harris told me that he is open to hiring more support staff, but that we would have to discuss it first at a staff meeting, possibly the next one. I told him that some of us thought we had already discussed it at length at staff meetings and that the need was clear.

Overall, Harris said that he wasn't inclined to give me much consideration, because of my organizing activity last

year. And he mentioned your name here too, Graham, as another unforgivable transgressor. "You tried to get me fired," he said, speaking either about me alone, or about you and me, or about all those involved. I said that isn't true. He said that if I believe that, then I must be very naive. And his attitude indicated that he doesn't think I believe that and that he doesn't want to even consider the possibility that I do. I think he wants to believe that I tried to get him fired, because according to his value system that would give him both the desire and moral right to fire me or drive me out, which now appears to be his agenda.

In pursuit of that agenda, Harris appears to have given Benka license to go after me and maybe all of management's perceived enemies on the staff. Around 6 pm on Wednesday 28 January 1998, I was in my office talking to Toni on the telephone when Benka opened the door and asked rudely and sarcastically if I was talking to one of our authors. I said, "No, I'm talking to a coworker, Toni." He acted as if he already knew that. He stepped further into my office and said that he wanted in on our conversation. I found this shocking, of course, and unprecedented. I switched Toni to the speakerphone and told her that Steve was here and wanted to be in on our conversation. She sounded equally shocked. Benka suggested that she come over to my office, and she said OK. Without saying anything, I walked out of my office and into the open area of desks just outside, and Benka followed. I did this to make room for Toni and to get some physical distance between myself and a former post office employee who was clearly behaving very strangely. Toni arrived quickly.

Benka asked me and Toni what we had been talking about on the telephone. I thought his question was way out of line, but I nevertheless told him: We had been discussing the May 1998 50th anniversary issue of Physics Today. (That is ironic, because every May-issue meeting that Benka has been a part of has been a disaster. Virtually every member of the staff thinks that that issue has been badly mismanaged, and no one thinks that yet another meeting with Benka is the way to generate the ideas that the magazine desperately needs to salvage it.) But after giving that short answer, I said that the important question is why he was trying to barge in on our conversation.

He said that he is forbidding all private conversations between staff members at work. From now on, all conversations between staff members must be open to management supervision, he said. When I asked him why, he referred to the organizing activity that took place last year and said that he doesn't want that to happen again. (He and Harris have no doubt that I played a leading role in that.) This looked like a retaliatory and repressive policy aimed more at me than at the rest of the staff, and so I

asked him whether or not it applies to everyone. He said it does. I didn't believe him (but I didn't say that I didn't believe him), and so I pressed him three or four times to say whether or not he was going to announce the new policy to the rest of the staff. His final statement was that he knows that I want to know that.

Of course, even if the new repressive policy is not formally announced, no one can afford to take a chance on violating it -- especially Toni and me, to whom it was announced formally. (Paul got a semi-formal announcement, as the discussion took place right outside his door, which was open at the time.) News of management's dim view of private conversations has spread throughout the staff by way of -- yes, you guessed it -- private conversations.

Even though Benka's Gestapo-like enforcement of the new policy was very frightening, in the middle of it all Toni managed to point out that we don't have the bi-weekly Q&A meetings anymore. If management wants to know what the staff is concerned about, they can have such meetings rather than monitor our conversations. Benka ignored her. I think Toni's idea is a good one and should be among our arguments and suggestions.

About half an hour before Benka busted up the telephone conversation between Toni and me, he did something that in retrospect was clearly part of the new repression but at the time felt merely strange and creepy. I had stopped by Toni's office to give her a newspaper article that I thought might interest her. It was about the Clinton/Lewinsky affair, which we had discussed earlier in the day. article was a brief historical survey showing that presidents who cheated on their wives were more likely to lie to the public as well, justifying public interest in this sort of thing. Toni and I discussed the article briefly and then discussed the 50th anniversary issue. During the latter discussion, Benka opened the door to Toni's office, entered the room and asked if he could join in the conversation. This seemed very strange, of course, . especially because he did not know what we were talking about. Toni was perfectly polite in spite of Benka's rude entry. She pointed out the article that I had brought by, dutifully restarting our conversation about it from the beginning for Benka. The three of us discussed the issue for a while, during which Toni and I were treated to editor Benka's view that the press should know its place and not try the president. It was an awkward discussion, because I and maybe Toni (she can speak for herself) were not really interested in speaking with Benka. When we finished the discussion, Benka showed no sign of leaving Toni's office. He indicated in a subtle but clear way that he would not leave first. This was not only bizarre, but also had something of an ugly edge to it. Although we had no idea what was going on, Toni and I acted quickly to undo the

situation -- she by immediately announcing that she had work to do, and I by quickly leaving the room. Benka and I then spoke about feature articles for ten minutes or so at his office. That conversation consisted of me detailing for him all the progress I had made on a number of articles. The discussion was pleasant, although not really necessary, and he acted pleased and calm throughout. However, when we finished talking, I walked toward Toni's office, and Benka followed me. He asked if I was going to Toni's office, and I said yes. He asked if he could come along. By that time he had already followed me most of the way to her office. I told him that she and I were in the middle of a conversation that we had started earlier in the day, and that it would take too long to fill him in on all the background. We discussed this briefly, and he finally suggested that neither one of us go to Toni's office. I didn't say anything one way or the other, and he went back to his office. I noticed a box nearby containing copies of the latest issue of the magazine; I took one and went back to my office. Later, when Toni and I spoke on the telephone about the 50th anniversary issue, we began our conversation by trying, without success, to figure out our supervisor's mysterious and disturbing behavior earlier.

HUMAN RIGHTS COMMITEE

of the
PLASMA SCIENCE AND APPLICATIONS COMMITTEE
of the
INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS

Co-Chairman: Dr. Wallace Manheimer Code 6707 Naval Research Laboratory Washington, DC 20375

Dear Prof. Krasheninnikov:

Co-Chairman: Prof. Victor Granatstein Department of Electrical and Computer Engineering University of Maryland College Park, MD 20742 We would be grateful if you would bring this letter to the attention of the Human Rights Committee of the Division of Plasma Physics of the APS. The ExCom of PSAC (Plasma Science and Applications Committee) of the IEEE voted unanimously authorizing us to contact you to make you aware of a human rights violation that we feel has occurred when Physics Today / AIP fired one of its editors, Jeff Schmidt. The human rights abuses we see include forcible suppression of both critical comments and private conversations within the workplace, followed by vindictive termination. The principal new information we feel we are providing consists of statements by three former AIP employees who are now willing to testify as to working conditions there at the time.

Enclosed is our report to PSAC ExCom. We requested the enclosed motion. Instead, we were instructed, by the aforementioned unanimous vote to contact your committee in the belief that protest and request for redress from you would have more impact.

Yours very truly

Wallace Manheimer

Wallace Manheimer

Victor Granatstein

PS. There is one member of your committee, Bruce Scott we do not know and there is more than one in the APS directory. Could you see that this gets to him as well. Thanks.

WM & VG

Report of the human rights committee, ICOPS Banff, May 2002

Last October's human rights report (A) mentioned the firing of Jeff Schmidt, an editor at Physics Today. Many people thought he was fired for the politics he expressed in a book he wrote Disciplined Minds, a book which claims professional are regimented to toe the 'company line' in various ways. Many hundreds of individual scientists wrote to Physics Today to protest. These are documented on a web site http://disciplined-minds.com. We wrote to Marc Brodsky of AIP to request more information (B), and his response (C) is enclosed. He claimed that Schmidt was fired for using AIP time for private purposes (ie free lance writing). Our initial impulse was to think in terms of some sort of compromise between Schmidt and AIP, and we gently suggested this by sending each of them our report. At the time we also thought the matter would be resolved by the courts.

A few months ago, we got a letter from Schmidt, we have had several others since then. Among other things he told us the dispute was not being resolved in the courts. Also he told us he would still be willing to reach a compromise with AIP and that he has been unable to gain other employment, largely due to the way he left AIP, ie no credible reason, no recommendation. Also he mentioned that his savings were largely depleted. We decided to investigate further.

His web site makes several rather shocking allegations, among them:

- 1. Schmidt was given a gag order and told not to talk critically about AIP.
- 2. He was told that private conversations of any kind were not permitted in the work place.
- 3. He was fired despite being given many good ratings, promotions and salary increases during a 19 year career.
- 4. The excuse given for firing him was fraudulent in that many other AIP employees were allowed to, and in fact, even encouraged to do extracurricular work of a scholarly nature as long as their AIP deadlines were met.
- 5. He had gotten in trouble at AIP for pushing for more diversity in the workplace.
- 6. After being fired he applied for unemployment benefits from the Maryland Department of Labor. AIP tried to prevent him from collecting, but when it came time to make its case against him, did not show up to do so.

If true, these statements would be a sweeping condemnation of employment practices at AIP, an organization we all feel we are part of in some way.

To further examine this, we contacted 3 former employees who were familiar with the situation, William Sweet, Paul Elliott, and Jean Kumagai. Sweet's and Kumagai's letters are included (D and E). Elliott sent a very long statement which we summarize here (F). They all confirm these allegations (except for 6 which we were unable to verify). In fact, if anything the situation was worse than described on the web site. Once we had these, we wrote once more to Marc Brodsky. Our letter is included (G). So far he has not responded, even though it took him only a day to respond to our first letter.

Our take: It is possible that Schmidt was fired for the politics expressed in the book. Many physicists believe this and have made their concerns known to AIP. It is also possible, and in fact seems more likely to us, that he was singled out for his efforts to bring more diversity to the workplace and for other instances of workplace activism. Then, despite a long and productive career there, AIP subjected him to a two year long smear campaign designed to damage his standing and reputation there. It then found a totally bogus reason to fire him without giving him the benefit of honest evaluation or an opportunity to defend or explain himself. What is not possible is that Schmidt was fired for the reason stated by AIP.

We feel that this is inexcusable and an appropriate area of concern for our committee. This is especially true where it is in a sense a matter internal to our own community. We feel it is vital that AIP and other APS and IEEE organizations treat their employees according to the highest standards, not like galley slaves. Accordingly we ask ExCom to pass the following resolution:

RESOLVED

The Plasma Science and Applications Committee of the IEEE deplores the firing of Jeff Schmidt by AIP. An investigation by our Human Rights Committee has convinced us that his termination was improper and should be reversed. We urge AIP to rehire Schmidt, openly welcome him back, cease all harassment of him, and give him back pay for the period of his forced unemployment

Wallace Manheimer Victor Dranatstein

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X-Sender: wsweet@shogun.ieee.org Date: Tue, 12 Mar 2002 15:57:23 -0500

To: Wally Manheimer <manheime@ccs.nrl.navy.mil>

From: William Sweet <w.sweet@ieee.org>

Subject: Re: Disciplined minds

Dear Mr. Manhelmer,

I cannot comment directly on the circumstances of Jeff Schmidt's dismissal, since I left the magazine many years before it occurred. During the eight years I worked as a colleague of Jeff's a Physics Today, I knew him to be a conscientious, competent, and consistently hardworking employee of the magazine who always got done what he was expected to get done on time and well.

Regarding the question of working on office time, it was my own experience at Physics Today that one was permitted to do freelance work or pursue personal projects, as long as they did not interfere with or detract from one's responsibilities to the magazine. I did a great deal of freelance work openly, much of it appearing in publications read regularly by Physics Today staff.

My impression is that in journalism and publishing generally, it is taken for granted that staff--and especially younger staff--will do freelance work or work on scholarly projects, partly to further their careers, partly just for the money, and partly for the joy of it. It is not uncommon, indeed, for organizations to positively encourage such work.

For that reason alone, I strongly suspect that the stated reasons for Jeff's dismissal were spurious. As stated at the outset, however, I am not in position to speculate about what the real reasons might have been.

Sincerely,

Bill Sweet

Dear Mr. Sweet:

I am the co-chair of the human rights committee of IEEE Plasma Science and Applications Committee. Recently the firing of Jeff Schmidt over his book *Disciplined Minds* has come to our attention and we are looking into it. Jeff has said we could contact you. For our report (to be delivered to our executive committee in the ICOPS meeting in Banff, May 24) we would like to get the impressions of other coworkers and former coworkers at AIP. If you could give us your impressions of what transpired that would be very helpful to us. Particularly Jeff said that you could describe your own experience in doing free lance work while you were employed at APS. I would appreciate if you would give me your take in a return email, especially on the items I mentioned. I will be away for a week and a half or so, but hopefully you can get back to me. I may also give you a call when I get back.

Thank you for your attention to this.

S 001376

X-Sender: jak.interport@pop.rcn.com Date: Sun, 21 Apr 2002 18:45:42 -0400

To: manheime@ccf.nrl.navy.mil

From: Jean Kumagai <jak.interport@rcn.com>

Subject: more about Jeff Schmidt

Dear Wally,

Thanks so much for giving me the opportunity to help your human rights committee do something on behalf of Jeff Schmidt and free expression within the science community. In my previous message, I gave brief answers to your questions about Jeff's promotions and pay raises and about the gag orders at Physics Today. Below I've provided greater detail on these two issues. I hope you find this useful for your investigation. Please let me know if I can be of further assistance.

All best, Jean

I was a member of the Physics Today editorial staff for ten years, leaving just six months before Jeff was fired. As is the case in many workplaces, he and I and other staff members routinely discussed our interactions with management, including performance reviews, pay raises, editorial disputes, and so on. That's how I know that AIP always gave Jeff jobperformance ratings of "meets job requirements" or "exceeds job requirements." (One year, management lowered his rating from "exceeds job requirements" to "meets job requirements," despite the lack of evidence that the quality or quantity of Jeff's work had fallen. Jeff contended, and I agree, that they were punishing him for his workplace activism.)

As for promotions, I attended the staff meeting where the editor announced that Jeff had been promoted. Bill Sweet received a promotion at the same time, and I remember Jeff and Bill humorously congratulating each other while the rest of us applauded. Promotions at AIP are not automatic, but are based on careful scrutiny of the employee's work. The same goes for raises. As a matter of policy, AIP does not give automatic cost-of-living raises, only merit raises. AIP would not have employed Jeff, promoted him, and given him merit raises for 19 years if he had not been doing his job to AIP's satisfaction. I think it is crucial to note that AIP, like other employers, regularly scrutinizes the quality and quantity of each employee's work. Thus, during my decade at Physics Today, I saw coworkers put on probation, demoted, or fired for not meeting the magazine's standards. AIP never did any of these things to Jeff -- until they saw his critical writing.

In firing Jeff, AIP claimed that he had stolen from the company, referring to the opening lines of his book ("This book is stolen. Written in part on stolen time, that is.") This is a laughably baseless charge. In the opening paragraph of his book, Jeff explains that "written in part on stolen time" means "spending some office time on my own work." This describes common Physics Today workplace behavior, albeit with an attitude. At Physics Today there were no official break times; editorial employees were expected to meet their deadlines, and they took their breaks whenever they wanted along the way. All of Jeff's coworkers (including me) openly pursued personal interests during their work breaks, but Jeff was the

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only one who was punished for failing to make sure that 100 percent of his office time was work time. The difference was the nature of Jeff's break-time activities -- his workplace activism and critical writing.

Like many employers, AIP engaged in "speed-up," demanding that editors and other employees do more work in the same amount of time. Jeff was outspoken in opposing this, in the interest of both staff and readers, but he always adapted to the changing standard himself. When Jeff was fired, he told me that he was two months ahead of schedule in meeting the annual work quota that AIP had set for him -- that he had completed 12 months' worth of work in 10 months' time. Having observed his work style for ten years, I do not doubt this.

Management had to be fully aware of these facts, and therefore fully aware that Jeff's book about the politics of work was doing nothing more than expressing a critical attitude about work. But they fired him anyway, nine days after they learned of his book and its contents, a delay that indicates that their action was calculated rather than emotional. As you may have seen, on 5 April 2002 the Chronicle of Higher Education reported the numerous protests by physicists against Jeff's firing. The reporter apparently asked AIP CEO Marc Brodsky, What if the book's opening line was merely a rhetorical device? Brodsky responded, "Even if it was, it's not good for the morale of other employees." In other words, Brodsky admits that he was willing to fire Jeff simply for expressing what Brodsky considers to be a bad attitude. I think the evidence indicates that that is exactly what Brodsky did.

As for the gag orders, the one placed on Jeff was imposed a few days after the second staff retreat. The retreat had been billed as an opportunity for the editorial staff to get together and "brainstorm" about the magazine's content and direction. Much to our surprise and disappointment, however, the managers prepared a rather rigid agenda for the retreat, one not at all conducive to creative thinking and open discussion. Near the beginning of the retreat, after opening remarks by Physics Today publisher Charles Harris, Jeff asked if we could ask questions. Harris said no. Jeff then argued that staff members SHOULD be allowed to ask questions at a retreat. Harris angrily shouted "No, that's an order!", ending the discussion. When Harris later called on me to speak about my department, I criticized him for shutting Jeff up. Some others did the same thing. The staff was quite upset by the repressive atmosphere that management had established. Needless to say, nothing much was accomplished at the retreat.

The gag order instructed Jeff not to tell his coworkers that he was being restricted, but he showed the order to me and other coworkers anyway. That upset Harris, but also led to staff pressure that forced Harris to rescind the order after about two months (along with a similar order that had been imposed on another staff editor, Graham Collins).

The gag orders were soon followed by the ban on private conversations in the workplace, wherein Physics Today Editor Stephen Benka announced that all conversations between staff members had to be open to monitoring by managers. Unlike the gag order, the ban was not issued in writing but rather declared verbally to Jeff and another staff editor, Toni Feder. (Toni and I worked very closely to produce a department of the magazine.) I heard about the ban immediately from both Jeff and Toni. Although Benka announced the ban to Jeff and Toni, he said that it applied to the entire staff. Paul Elliott, another editor, overheard the announcement. The rest of the staff learned of it, ironically, through private conversations. Unlike the gag orders, the ban on private conversations in the workplace

was never rescinded, even though Jeff formally appealed it to James Stith, a top official of the American Institute of Physics. I think the ban was aimed mainly at silencing Jeff and discouraging other staff members from talking to him.

Since leaving Physics Today in November 1999, and especially since Jeff's firing, I've often thought about the gag orders and the conversation ban and the generally repressive environment there. Unlike a lot of bad memories, though, these ones don't fade with time. I hope that the human rights committee will do whatever it can to obtain justice for Jeff. In so doing, I believe you will also be helping to improve the work environment at Physics Today, by compelling AIP to reconsider its policies and actions, and ultimately benefitting the science community at large.

S 001379

Summary of Paul Elliott's email:

Paul Elliott worked in a neighboring office to Schmidt for just under 5 years, from 1995-2000. Schmidt was an editor for 14 years before Elliott arrived, which was just after AIP hired a publisher (for the first time), Charles Harris, and an editor in chief, Steven Benka. From 1995-2000, according to Elliott, Schmidt was well regarded by the PT staff, met all deadlines and other obligations. But Harris, and Benka particularly increasingly became openly hostile toward Schmidt from about 1995 through 1997. During that period, Schmidt was in the forefront of staff efforts trying to get PT to hire a more staff with more diversity (virtually the entire professional PT staff apparently was white male), as well as bring about other improvements in the staff's working conditions. This effort apparently led to the embarrassment of PT management in front of higher ups at AIP and the PT advisory committee (I suppose a bunch of senior physicists).

At about this time, in the fall of 1997, Charles Harris not only gave Schmidt a written and secret gag order, which Elliott saw, but gave one to another editor, Graham Collins, whom Harris also saw as troublesome. A month of so later, under pressure from PT staff, these orders were rescinded. However in January 1998, Elliott heard Benka angrily tell Schmidt that private conversations between members of the PT staff behind closed doors were forbidden and had to take place outside after business hours. After this, Schmidt kept a very low profile at PT. If he had been a "troublemaker" before this, he certainly ceased being one at this point-but, said Elliott, there was no let-up in management's hostility toward him.

Elliott said that many members of the PT staff, certainly including Benka, used the work day for other private purposes. Elliott worked 10 feet from Schmidt for 5 years and saw no evidence that Schmidt was doing anything but his job as an editor. He certainly was not visibly working on a book. Elliott even pointed out that in late 1998 Schmidt took a 6 month unpaid leave of absence, and in retrospect, Elliott surmises that it was probably to work on his book. During that period too, said Elliott, management continued to openly malign and denigrate Schmidt.

Elliott's conclusion was that PT editorial management thought of Schmidt as a trouble maker, subjected him to "a long term smear campaign followed by prejudicial termination on a fundamentally bogus charge", and fired him as an act of revenge without giving him a chance to explain or defend himself.



HUMAN RIGHTS COMMITTEE

of the
PLASMA SCIENCE AND APPLICATIONS COMMITTEE
of the
INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS

Co-Chairman; Dr. Wallace Manheimer Code 6707 Naval Research Laboratory Washington, DC 20375

Co-Chairman:
Prof. Victor Granatstein
Department of Electrical
and Computer Engineering
University of Maryland
College Park, MD 20742

April 17, 2002

Dr. Marc H. Brodsky
Executive Director and CEO
American Institute of Physics
One Physics Ellipse
College Park, MD 20740

Dear Dr. Brodsky:

We sent you the enclosed letter concerning the firing of Jeff Schmidt and also enclosed is your response for which we thank you. We have continued to look into this matter, and we must say that with our current understanding of the situation, we find the response of AIP to be not satisfying to us. We have spoken to several people, and apparently employees at AIP are not fired for using company time for such private business as free lance writing, as long as all AIP deadlines were met. Schmidt and others have claimed that the expression 'stolen time' was not used to confess to larceny, but to emphasize the particular point made in the book. From what we know now, this seems reasonable to us.

As far as we are able to discern, Schmidt met all his deadlines at AIP and was a well regarded worker. Several people have claimed that internal records in Physics Today verify this.

There is one factual matter which we were unable to independently verify and we wonder if you could help us out. On his web site, Jeff Schmidt claimed that when applying for unemployment benefits, AIP tried to prevent him from receiving them, but when it came time for AIP to make its case to the Maryland Department of Labor, it did not show up to do so. We tried to verify this with the aforementioned department, but these records are confidential.

Let us tell you what we think may have happened. We are not certain, but this is the simplest and most reasonable explanation of the facts which we know. Around the end of 1997, in a meeting with AIP and Physics Today's external advisory committee, Jeff Schmidt embarrassed his supervisors at Physics Today by complaining to powerful outsiders about lack of diversity in the workplace. We can certainly believe that his supervisors would frown on his taking such a complaint so far outside the chain of command. In some organizations this might be grounds for dismissal, while in others it would be acceptable behavior. If Schmidt had been fired then, for that, we would be much less sympathetic to him. While unquestionably harsh, he would have suffered a serious consequence for what might have been regarded as a serious faux pas. The firing would have been honest on the part of his employer, he would most likely have learned from the experience, and the negative impact on his reputation would have been minimized. Instead however, AIP strung him along for more than two years, a time during which Schmidt was especially trying to keep out of trouble. Finally AIP found a bogus reason for firing him, and did so in a way that would do him maximum harm. This seems inexcusable to us, and an appropriate area of concern for our committee; particularly where it involves an organization which we all support and would hope lives up to the highest standards regarding its personnel.

Anyway, this is the way we currently see it and it is the way we will present it to our Executive Committee in mid May. Do we have it wrong? We invite your response. (Mail to government facilities being what it is, if you decide to respond, please fax WMM 202-767-1607; US mail to VLG okay)

There is one other thing. When we first looked into this matter, we thought the best solution would be some sort of compromise between you and Schmidt. That is why we sent both of you our initial report last October. Even at this late date, could that still be possible? Schmidt told us he would be willing to do so. Would AIP?

Victor L.

Yours very truly.

Wallace M. Manheimer

Wallace Manheime,

Victor L. Granatstein

27 April 1998

To: Theresa Braun, Director of Human Resources, and James Stith, Director of Physics Programs, American Institute of Physics

From: Jeff Schmidt, Senior Associate Editor, Physics Today

Subject: My 1998 performance review

I am writing to ask that my 1998 performance review be redone. Physics Today editor Stephen Benka wrote the review under the direction of Physics Today publisher Charles Harris. I discussed the review with Benka, who, after consulting with Harris, refused to make any of the revisions that I requested. Therefore I am appealing to you to produce a new review.

The review was not conducted in accord with American Institute of Physics policy or procedures, and the result is not a fair assessment of my work as a feature articles editor at AIP's Physics Today magazine. I am asking you to produce a new review not just in the interest of accuracy, but also as a necessary affirmation that in the future the American Institute of Physics will treat its employees fairly.

The review lowers my performance rating from last year's "4" ("Exceeds Job Requirements") to a "3" ("Meets Job Requirements") even though this year I did more work and more innovative work. Producing feature articles for the monthly magazine is a team effort, and I think that the many staff members with whom I work will testify that my work is better than average.

The biased review that I received is punishment for my organizing activity at the magazine. It is one of a number of recent reprisals for -- and moves to stop -- such activity, in which I have played a leading role in the interest of both the magazine's staff and the physics community. The central retaliatory feature of the review is that it makes what it admits are "new demands," which amount to a sharp increase in my workload.

I have had 17 performance reviews since I began working at Physics Today in March 1981, but until now I have never needed to write a response to one. This time, however, not only is the review inaccurate, but my supervisor, editor Benka, presented it to me with the attitude that performance reviews at AIP are not done with employees, but are done to them. This violates both the letter and the spirit of AIP policy. He acted as if he were not permitted to change the review in any significant way, and so his discussion of its contents was only pro forma.

In this memo I will first describe some of the ways in which the review is inaccurate, and then I will explain how

it is a reprisal for my organizing activity and part of a series of recent attempts to stop me from engaging in any further collective activity at the magazine.

Review inaccurate

I will go over every sentence of the performance review and show how the review plays down or completely leaves out my accomplishments while contriving deficiencies and playing them up. The review has four sections: three sections focusing on my major areas of work responsibility and one section of additional comments.

Article editing

Concerning my article editing work, the review states that "Jeff's articles are generally ready on time and are often early." This plays down my accomplishments and does so deliberately, because management keeps records of deadlines and work-completion dates and is fully aware of what I have done in this regard. The words "generally ready on time" must be changed, because my articles were always ready on time and never delayed an issue of the magazine. And the words "often early" must also be changed, because my articles were almost always early and were often very early.

This is not to say that management can reasonably hold me responsible for the final completion dates of the articles that I work on. They cannot, because the publication process depends upon the work of the magazine's editor and many coworkers, over whom I have no authority. What my review should note is that I always did my part as fast or faster than can reasonably be expected, and certainly much faster than average. At one point during the year, for example, I had two feature articles ready to go to the printer more than a month before the deadline (discussed further in the following two paragraphs). As far as anyone can remember, this had never been accomplished before at Physics Today. My articles came close to the deadline only when the editor failed to meet his deadline for obtaining the articles and giving them to me to edit. I ask that you rewrite this part of my performance review and increase the numerical rating to reflect the resulting more accurate appraisal. I am asking you to do this not just to make my review more accurate, but also to assert that it is not AIP policy to begrudge an employee praise when it is due, even if AIP has a grudge against that employee.

On the issue of deadlines, I would like AIP to use its own performance as the standard for comparison. AIP gave me my performance review more than five weeks late, missing its mid-February deadline and then not even completing the review by the middle of the following month. Benka dated my review 12 March, signed it on 23 March and gave it to me on 24 March.

One big reason that I did more work this year than last year was because management stated that it wanted the magazine to have a backlog of feature articles that were edited and completely ready to be sent to the printer. I supported this goal and produced such articles, but this unprecedented accomplishment is not mentioned in my performance review. Management is fully aware of my accomplishment, as evidenced by the fact that they praised it at a staff meeting.

Working way ahead of the deadline has the potential advantage of avoiding some major inefficiencies (described in the following paragraph), but doing so turned out to involve extra work, because although management asked for and praised the result, they did not support the effort while it was underway. It was left to me to bring about the changes in the workplace necessary to work ahead. editor consistently maintained a crisis mentality, always giving priority to work for the next issue -- which he always worried would be late -- over work for future issues. Because the work of most employees on a forthcoming issue doesn't end until around the time that the issue goes to press, the editor, with his crisis priorities, never deemed it reasonable to work on later issues. I was able to accomplish management's goal of completing work ahead of schedule only by working directly with the staff team that actually does the work (Rita Wehrenberg, editorial assistance; Paul Elliott, copy editing; Elliot Plotkin, art work; Judy Barker, proof reading; Carol Lucas, photo permissions), and carefully avoiding coming to the overly insecure editor with questions of work priority. I ask you to add this accomplishment to my performance review and raise the numerical rating to reflect the resulting less biased appraisal. I ask you to do this not only to make my performance review more accurate, but also as a way of saying that AIP does not condone biased appraisals of employees.

Another big reason I did more work this year was the inefficiency caused by the magazine's periodic exhaustion of its supply of feature article manuscripts that are ready to edit for publication. It is Benka's responsibility to obtain articles for the magazine. The shortage of articles resulted in a very uneven work flow and forced me to edit some articles close to the deadline, which often meant editing in parallel with the author's making revisions. It is easy for the editor to say "just work in parallel," but such work often necessitates reediting material that the author changes and discarding edited material that the author removes, and a host of other problems. The shortage of articles led me to write to the editor in the middle of the year asking for more work. (See attached memo of 18 August 1997.)

The numbers given in the performance review are all wrong. The review says that this year I "was asked to produce 16-18 articles." In fact, the agreed upon rate was initially 16 per year, not "16-18," the precise meaning of which is not at all clear since there presumably is no upper limit. Benka and I later in the year agreed to reduce the annual rate to 14 and increase the amount of work that I do in areas other than editing, yet the number "14" never appears in my performance review. I ask you to correct this.

As far as the article editing part of my job goes, my production rate is supposed to be measured by the number of articles published in the magazine in the issues March 1997 through February 1998, as is written at the top of the review form. During that year I edited 13 articles (Mahan, Ferguson, Crabtree, Crowley, North, Parsegian/Austin, Harris, Soulen, Libicki, Perl, Ross, Riordan, Mourou), one of which (the Parsegian and Austin combination article) should count as more than one because making it happen involved a lot of extra work. (More about that article below.) Although this is less than the agreed upon goal, it should be deemed acceptable because of the shortage of articles (AIP should not hold employees responsible for doing work that is not available to do) and because of the extra work caused by that shortage and by management's lack of support for working ahead. Please correct the accounting in this part of the review.

The review gives an incorrect reason (a personal reason) for the mid-year change in my job description. reduction in my article editing goal from 16 to 14, and the corresponding increase in my work following up with authors on articles that have been solicited, was prompted by the magazine's shortage of articles. On 18 August 1997 I gave Benka a note (attached) asking for more articles to edit. On 19 August 1997 he answered with a very defensive note (attached) blaming me in part for the magazine's shortage of articles and at the same time denying that there was any such shortage. He claimed that I was in part to blame, because following up on solicited articles was part of my On the same day (19 August 1997) Benka secretly altered my job description, adding truth to his claim that solicitation follow-up was a significant part of my job. When I discovered the change, he and I discussed it and I agreed to make solicitation follow-up a bigger part of my I asked him to write me a note saying that my job description had been changed (see 25 August 1997 note from Benka, attached).

The change in my job description, while made official in the middle of the year, should be considered retroactive to the beginning of the year, because the problem it addressed was long-standing and I had long before addressed it on my own: The shortage of articles to edit had already

led me to shift some of my work from editing to solicitation follow-up. Solicitation follow-up is an area in which I make valuable contributions to the magazine. This often time-consuming work includes giving feedback to authors and working closely with them to develop greatly improved articles for the magazine.

Finally, on 2 September 1997 I gave Benka a note (attached) explaining that solicitation follow-up was not the weak link in the magazine's feature article operation. That note, the contents of which Benka never disputed, is an important part of this appeal about my performance review, and as such, I ask you to read it. Please remove from my performance review the incorrect reason given for the change in my job description, and add a statement concerning the magazine's shortage of articles, because it played a crucial role in my work last year.

My work on the Parsegian/Austin combination article is one of many examples of how my performance review leaves out major contributions that I have made to the magazine (while carefully including minor, largely contrived, deficiencies). Physics Today was planning to publish in its July 1997 issue a manuscript by V. Adrian Parsegian of the National Institutes of Health, but the article received a highly negative appraisal from the magazine's external reviewer, Robert H. Austin of Princeton University. This caused a crisis, because the magazine had no article to substitute --having completely run out of articles -- and because there was no time for Parsegian to make the extensive revisions that were called for by the reviewer.

Based on the nature of Parsegian's article, the nature of Austin's review and my confidence in the critical abilities of the magazine's readers, I suggested a solution: Publish the article and the review. This was unprecedented at Physics Today, but the editor followed my advice, in part because no other solution was apparent. I edited the combination article and review and handled the delicate and protracted negotiations between Parsegian and Austin, who did not trust each other. The solution was innovative, the result was outstanding and the magazine survived a crisis without damage. In fact, the result was better than it would have been had there been no crisis, because the crisis allowed the magazine to break with tradition. Yet the managers, who seem this year to have developed photographic memories for negative things (real or contrived), have completely forgotten about my special contribution to the magazine during the Parsegian crisis. I ask that my work on the Parsegian/Austin article be described on my annual review, as an example of my valuable advice and aboveaverage work. And I ask that my numerical rating be raised to reflect the new, unbiased text.

You might think it strange that even though the review states that I edited enough articles during the year, it

lists the names of some articles that I didn't edit -articles that were never assigned to me and that I was not expected to edit. That list appears on my performance review as a defensive measure by the editor -- to bolster his claim that under his editorship the magazine does not experience shortages of articles. Soliciting a sufficient number of articles for the magazine is the editor's job, and so the appropriate home for arguments that he has succeeded is the "Employee's Comments" section of his own performance review. Please remove the sentence and its negative connotation from my performance review. (For a discussion of how the list is not even what it claims to be, see the fourth paragraph of my memo of 2 September 1997.) lists do not appear on the performance reviews of other employees. The performance reviews of Physics Today news writers, for example, do not contain lists of the countless news stories that they could have written but didn't.

The review lists three articles that I edited (Perl, Crabtree/Nelson, Mourou) and claims that the quality of my work varied. In fact, because of my own standards I do a quality job on everything I do. There is, of course, no objective measure of the quality of editorial work. Articles are inherently different and hold a different appeal to different readers. In my performance review the editor implies that praise from authors is one measure, but he fails to note that we received praise from the authors of all three articles. Martin Perl, winner of the 1995 Nobel Prize in Physics, wrote to me and said "Thank you for changing my ugly duckling of a manuscript into a beautiful swan. You have done a wonderful job." I have attached a copy of his note along with a note from George Crabtree of Argonne National Laboratory praising our efficiency, competence and high production standards; Mourou delivered his praise in a telephone call.

It is true that the changes that Benka mentions making in the Mourou article were improvements that other staff members or the author might not have made at one of the later stages in the processing of the article. However, it is wrong to use this as the sole factor in judging the quality of work on the entire article, which would have been excellent even without Benka's improvements. And it is even more wrong to use it to judge an employee's entire year of work. Stephen Benka knows this. He knows, for example, that AIP management will not judge all of $\underline{\text{his}}$ excellent work on the Mourou article solely by the fact that he tried to introduce a mistake in the article's opening paragraph -where he crossed out "30 angstroms" and wrote in "300 nm" and had to be corrected by the Article Editor. And he knows that his supervisors certainly will not judge his entire year of work in part by this mistake. He would see mentioning it on his annual performance review as petty, mean-spirited and sure to make team work impossible because it would give the impression that no error is too small for

the people that he works with to silently note and use against him months later. Please remove from my performance review the entire subjective sentence about the three articles.

Solicitation follow-up

Concerning my solicitation follow-up work, the performance review understates the quality of my work and rates me only slightly above average. The only activity mentioned is that I "regularly nudged authors and reviewers whose items were pending." This is actually the smallest part of solicitation follow-up work. The biggest part, at least for the articles that I work on, is giving detailed feedback to the author and working with the author to develop a much better article. I often go way beyond the call of duty, taking extra time to work closely with authors to improve the final result. I am prepared to supply written evidence showing that my work in this area is exemplary. Please change the review so that it more accurately portrays my work in this area, and raise the numerical rating from the present stingy "3.5."

Advice

Concerning the advice that I offer on editorial and other matters, my supervisors have suddenly (that is, within this review period) started looking for ways to prove that the advice I offer is bad. Coming up empty-handed, they have contrived two examples, one of which is a new, negative interpretation of advice I gave in an earlier review period. My 1998 performance review says, "Jeff's reviews of manuscripts have been completed more promptly than in the past, although they were somewhat less helpful." It is simply not true that my advice was less helpful this year. My comments on manuscripts often went beyond the minimum requirements and spelled out in detail what should be done to produce a publishable article.

As evidence that my advice is less helpful, the performance review gives only the following example, which is presumably my most deficient piece of work in this area for the entire year: "In his review of one Letter to the Editor, for example, he showed questionable judgement in his assessment of the physics competence of the authors of the Hubble Deep Field article (April '97)." There is absolutely no truth to this charge; its only value is that it reveals the bias of those who made it. I demand that my work on this letter be evaluated by an unbiased individual. James Stith, I would like you to be that individual, not because it is your job to handle appeals from Physics Today, but because your long-standing interest and expertise in physics education qualifies you to evaluate my work on this letter. All work on the letter was done in writing, and so you have a 100% complete record to review (attached). I challenge

you to find anything in my work on the letter for which I should be punished.

Here is a five-step summary of the facts of the case:

- 1. I edited an article by Henry Ferguson and two coauthors for the April 1997 issue of Physics Today.
- 2. Robert Weinstock, an emeritus professor of physics at Oberlin College, submitted a letter to the editor saying that he didn't understand how astronomers could look back more than half the age of the universe, as a photo caption in the article said. "This claim seems strange to me," wrote Weinstock, "for radiation emitted so long ago must have had its source so close to Earth at the moment of emission -- according to the generally assumed big-bang origin of the currently expanding universe -- that it would have reached Earth [long ago]." He ended his letter by saying that "If there is something wrong with my analysis, I shall be grateful to have it explained to me."
- 3. I thought Weinstock asked an intriguing question and that many of our readers would also be grateful for an explanation (and would value a magazine that gave them such explanations). Here, in its entirety, is my review of the letter: "I think a lot of our readers would appreciate an answer to the question that Weinstock raises. I suggest that we publish a shortened letter (see enclosed edited version) along with an answer from Ferguson." (The parenthetical words were part of my review.)
- To my disappointment, the response from Ferguson and his coauthors was based completely on equations, with no explanation of what was going on. I wanted a physical explanation, not a mathematical one. So I recommended that we ask Ferguson & Co. for something very simple. Of course, as good science writers and teachers know, an explanation that is simple and without equations is sometimes much more difficult to produce. Sometimes when scientists don't have a Feynman-style intuitive understanding of a particular issue, they take refuge in equations. That is, sometimes authors don't understand the physics of every item that they report in their articles. I have encountered this countless times over the years while questioning authors so that I could clarify something in their articles. Sometimes they say: I don't know, my coauthor wrote that part of the article. Or they say: I don't know, I got that from So and So's paper in such and such journal. So in my review of Ferguson's letter I warned that this was one possible reason why we got only equations. I figured that if we were aware of this possibility, then we wouldn't go back to the authors again and again in a futile effort to get something that they were not prepared to supply. Here, in its entirety, is my review of Ferguson's letter: "Weinstock's question should get a physical explanation as an answer, not a

mathematical one like this. I say drop the mathematical one, don't just add the physical one to it. Perhaps ask Ferguson & Co. to write what they would say to a high-school student (or radio audience) who noticed this seeming contradiction. One possible reason that Fergie & Co. answered as they did is that they don't really understand the physics."

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5. Benka rejected my suggestion that we ask Ferguson for a simple answer, and, ironically, punished me seven months later for not being fully confident that Ferguson could have provided such an answer. Because my advice was rejected, Physics Today readers ended up seeing no question from Weinstock and no answer from Ferguson.

You can see clearly now that while my performance review says, "he showed questionable judgement in his assessment of the physics competence of the authors," I in fact never made any assessment of the physics competence of the authors, positive or negative. Even if I had made such an assessment, the Physics Today managers did not and cannot accurately claim that the advice it led me to give was anything less than excellent. Their relentless search to find fault with my work, and their twisted and biased evaluations of my work when it contains no real fault, raise serious questions about their professionalism as managers and certainly disqualify them from judging my performance. If you judge that I did good work on the letter, as I claim, then I ask that my performance review mention that work as an example of my routine interest in serving the magazine's readers, and that the numerical rating on my review be raised to reflect the new, unbiased assessment. I ask AIP to make these adjustments not just to make my performance review more accurate, but more importantly as an urgently needed announcement that AIP will no longer use performance reviews to punish employees who raise troubling workplace issues.

As with every other part of my performance review, Benka refused to make any changes in this part of the review when I pointed out its inaccuracy. I asked him if he had any other examples of my supposedly bad judgment. All he could think of was something from an earlier review period: my suggestion that Physics Today try to get G. Pascal Zachary to write an article about Vannevar Bush. Zachary is a journalist -- one of the best in the country, I think -as well as a history of science scholar. I had learned that he was writing the first ever biography of Bush, who was the first presidential science advisor and an individual who played a key role in shaping the federal science policy that prevailed for decades after World War II. After I proposed this article at a staff meeting, Physics Today publisher Charles Harris spoke about it with AIP history division postdoc Joel Genuth, a friend of Harris's at the time. spoke with Genuth, too. Genuth advised against the article,

because Zachary was not a mainstream thinker -- quickly adding that he (Genuth) was "no slouch" and could write the article for Physics Today. At a subsequent staff meeting, I reported positive evaluations of my proposal from more established science historians and argued that our readers could handle Zachary's point of view. But Harris stuck with Genuth's review, and so that was the end of my proposal.

Now, more than a year later, during the discussion of my 1998 annual review, Benka has put a new, totally negative spin on my work on the Zachary proposal. To my surprise, when he mentioned my judgment in the Zachary case, Benka showed no sign of embarrassment, apparently completely unaware that Zachary's book was recently published to widespread praise and attention. The vast majority of books are not reviewed anywhere, but Zachary's Endless Frontier: Vannevar Bush, Engineer of the American Century (The Free Press, 1997) was both widely and positively reviewed by well-respected experts writing in major publications. (Please read the attached reviews.) Apparently, the official Physics Today line now is that Zachary managed to hoodwink major American publications and experts -- but not Physics Today. Again, because my advice was not followed, Physics Today readers missed out on what surely would have been an interesting article. Yet I am the one whose judgment is being questioned -- for reasons that I will explain below.

I ask that my performance review be corrected so that my judgment, and its value to the magazine, is discussed positively rather than negatively. I would like my work on the Zachary proposal to be mentioned as an example of the fact that I offer ideas of merit even though I am not expected to be a major source of article or story ideas. I ask that the numerical rating be raised to reflect the new positive evaluation, and that the rating be above average to reflect the fact that I offer more than the required advice. I request that AIP make this change not just to make my performance review more honest, but more importantly as an implied announcement that AIP will no longer prejudice performance reviews against employees who raise awkward workplace issues.

Additional comments

In the handbook that is given to all employees, the American Institute of Physics promises that the annual performance review will feature a discussion of "mutual goals." (Employee Handbook, page 18.) Without explanation, this year Benka followed neither the letter nor the spirit of this policy, and didn't even pretend to be interested in what direction I might want to go in my work at AIP. The discussion was unlike anything I have experienced in previous years. He simply announced a big change in my job description -- an increase in my workload by as much as

three months' worth of work per year -- and discussed it as if he were giving orders to a machine. Over the years my job description has changed many times (the most recent change being on 25 August 1997), but never by unilateral management dictate, without discussion and mutual agreement. For reasons that I will explain below, I think this change, and its unilateral imposition in violation of American Institute of Physics policy and usual practice, is punitive.

The written review accurately calls the change "new demands." But it inaccurately implies that other Physics Today staff members are meeting such new demands. My coworkers have experienced no such major increases in their workloads either voluntarily or by management order (except in one or two cases in which individuals have voluntarily renegotiated their job descriptions, job titles and salaries). My coworkers and I work hard and cannot reasonably be expected to take on additional work. Among my coworkers who have not stepped up their workloads are Gloria Lubkin, Barbara Levi, Bert Schwarzschild, Charles Day, Irwin Goodwin, Carol Lucas, Toni Feder, Jean Kumagai and Warren Kornberg.

The 25 August 1997 agreed-upon change in my job description reduced my article editing work to 70% of my time (14 articles per year) so that I could increase my work in other areas, which I have done. Now, just a few months later, AIP is using my performance review to arbitrarily increase my annual article editing load to 18 -- a 28 percent jump. The performance review also changes my job description to add a significant load of clerical work (keyboarding) to my job for the first time in my 17 years at the magazine. Other editors who work better on paper (for example, the book review editor and the copy editor) are not being told to change the way they work or to take on the associated clerical work. This clerical work, which includes keyboarding the dozens of changes made by the copy editor, could take as much as a few days per month, depending upon the article. It would lower the overall efficiency of work at the magazine, because the time spent on clerical work would, of course, reduce the time available to do other work such as article editing and article solicitation; instead of paying \$15/hour for clerical work, AIP would pay \$30/hour. Like many people, I do better work on paper than on a computer screen (and a long-standing back problem precludes long sessions sitting in front of the screen anyway). I ask that support staff be made available once again. Even if management had a valid reason for adding clerical work to my job, that reason cannot be a new one. What is new is that, for reasons discussed below, management has suddenly gotten "on my case" and is taking a hard-line on every issue.

In Benka's <u>pro forma</u> discussion with me about my performance review, he never asked about the direction in

which I would like to go on the job. If I were able to take on additional work, I would like that additional work to be somewhat different from what I am doing now, to provide some variety and to contribute to the magazine in a different way. When I explained this to Benka, he acted uninterested and reasserted his uninspiring, unilaterally developed plan for me, which is to do the same work, only a lot more of it.

Reprisal and repression

The American Institute of Physics is making a strong effort to prevent Physics Today staff members from pursuing workplace grievances in an organized way. Problems are to be discussed with managers on an individual basis only, we have been told. (Message transmitted to staff through warnings to Graham Collins and in other ways.)

Physics Today staff members have many legitimate concerns. Many believe, for example, that the company fails to provide conditions of employment appropriate for professionals. According to my philosophy, if there is a problem, then everyone who is in a position to address it has a moral obligation to do so. Thus, problems at the magazine are everyone's business -- the business at least of everyone who works there. Even though management doesn't see it that way, I have always tried to do whatever I could to help solve problems that arise, whether or not they affect me directly. You, too, are in a position to do something about the problems at the magazine, and therefore I think you have an obligation to do so, for the sake of both the magazine's staff and the physics community.

During the discussion of my performance review, Physics Today editor Stephen Benka condemned my organizing activities at the magazine and said bluntly that such activity "is not going to be tolerated anymore." He characterized the staff actions in which I have played a leading role as nothing more than "disruptive," rejecting my view that the source of the problem is management's failure to address staff grievances. A workplace in which unity is discouraged, as it is now at the magazine, is disruptive. The low morale, the inability to confront problems, the loss of talented and dedicated staff due to a love-it-or-leave-it atmosphere -- these consequences of management policy are disruptive and wasteful.

Physics Today publisher Charles Harris has made it clear to me and to many staff members (names withheld) that our activities have infuriated him. And American Institute of Physics Executive Director/CEO Marc Brodsky has characterized some of my activities, presumably reported to him by Harris, as "counterproductive" (20 March 1998). It is clear that Benka's hard-line attitude toward me is an attempt to redress Harris's and Brodsky's grievances with

the staff -- in particular, with those staff members whom Harris has identified as ringleaders. (Harris's ringleader theory insults the staff, because it implies that staff grievances arise not because of real problems in the workplace, but because an evil few have corrupted the minds of happy but gullible staff members and led them astray like children.)

In this memo I will be open about my organizing activities at Physics Today, because the problems at the magazine call for an organized response and because the physics community strongly supports physicists' right to organize without fear of reprisal. The latter point is evidenced, for example, in the community's many years of support for Soviet physicists who were punished for organizing, and in its concern today for physicists in other countries who face similar repression. In any case, freedom to address workplace problems is a necessary component of a truly democratic society.

Management is attempting in two ways to prevent the Physics Today staff from pursuing collective grievances -- by punishing those who speak out the most and by maintaining an increasingly repressive workplace atmosphere. My lower performance rating and subjection to an arbitrarily revised job description that makes "new demands" are punishments for taking up staff grievances. What follows is a discussion of a few of the collective staff activities in which I played a leading role and for which management criticizes me. Included is a discussion of some of the repressive measures that management has taken in response to those activities. The discussion should make it clear that my review is only one part of a series of recent attempts to stop me from promoting or engaging in any concerted staff activity.

1996 retreat

During the discussion of my performance review, Benka criticized me for my activities around the 19-20 November 1996 Physics Today retreat. Before that two-day meeting, I and some coworkers (names withheld) developed and distributed to the entire staff a list of changes that we wanted made at the workplace. We presented these requests in the form of a proposed agenda for the retreat. Fearing reprisals for making requests that might not please management, we did not disclose our names. However, the fact that I played a leading role was known to all. security was our highest priority, and so our demand for that topped our list. (See item 1 in attached document of 15 November 1996.) Other requests included staff involvement in workplace dispute resolution (item 4), better distribution of job tasks (item 5), affirmative action in hiring (item 8), and conditions of employment appropriate for professionals (the other items).

Salary equity

I worked with other staff members to demand pay equity at Physics Today. On behalf of those of us who were pushing for this, I told the Physics Today advisory committee at their 4 October 1996 meeting that the large salary differentials among the staff were not only unfair, but also divisive and bad for morale and productivity. I raised the issue at various staff meetings as well. Management was not pleased by the pressure we applied, in part because it forced them to give a staff member (name withheld) a special 25% salary increase, beginning on 1 June 1997.

Affirmative action

Management's anger at me increased dramatically, and never subsided, when I worked with Jean Kumagai and other staff members (names withheld) to assert the need for equal opportunity and affirmative action in hiring at Physics Today. We raised the issue when Ray Ladbury left the magazine, creating an opening on the editorial staff. replacement, Charles Day, started work on 2 June 1997.) spoke out strongly on the equal opportunity and affirmative action issue, because Jean and I and the others didn't think Physics Today or AIP management took it seriously. Our concerns were largely ignored, and so, later in the year, we decided to bring the problem to the attention of the Physics Today advisory committee at its annual meeting, held 17 October 1997. On behalf of the concerned staff members (names withheld), I brought the matter to the committee's attention.

One week later, on 24 October 1997, American Institute of Physics Executive Director/CEO Marc Brodsky called me and said that I had made "a very, very serious charge." (Detailed notes available.) He directed me to meet with him and defend my charge, and I did so on 5 November 1997. At that meeting I gave Brodsky a note summarizing the important points. Rather than repeat those points here, I am attaching a copy of the note. (See note of 5 November 1997.) That note is an important part of this appeal about my performance review, and so I ask that you read it.

At my meeting with Brodsky I also pointed out that AIP had failed to conduct the affirmative action training that it promised to conduct in its 284-page "1996 Affirmative Action Program for American Institute of Physics." (See attached excerpts.) Among the many promises that AIP makes in that 1996 document is that "During the current plan year we will be conducting training for all employees about our affirmative action program and equal employment opportunity in the workplace." I pointed out to Brodsky that AIP did not conduct the promised training. He countered by saying that he was pretty sure that he mentioned affirmative action either at the one-hour question-and-answer session that he

held on 20 June 1996 or at the Q&A meeting that he conducted for employees at AIP's facility in Woodbury, New York. (I recall no such mention at the 20 June 1996 College Park meeting.) He indicated that this mention was the promised affirmative action "training."

Brodsky said he would look into affirmative action at Physics Today and tell me what he found. After a 4.5-month investigation, he met with me on 20 March 1998 and reported that he found that Physics Today's affirmative action program was doing very well. He said he judges the program by its results. (This was mysterious, because as of 20 March 1998, the Physics Today staff in the College Park office was all white; out of a staff of 18, the magazine had only one minority employee, working from New York.) I asked again about the promised affirmative action training. time he said he was sure that he had mentioned affirmative action at both 1996 Q&A meetings, and he again indicated that such mention was the promised affirmative action training. After extensive questioning, he said that such mention was "part of" the promised training. I asked him when the rest of the training would be done, and he promised to look into that. In the end, I told Brodsky that we still believe our concerns to be well founded and that we are disappointed with his response. Apparently in Brodsky's view, however, the upshot of what happened is that I leveled serious, totally unfounded charges at AIP, and he is not happy about that.

1997 retreat

Management's anger at me increased yet again (and has not decreased since) when I helped raise staff concerns before and during the 25 September 1997 one-day Physics Today retreat. Before that meeting, I played a leading role in producing a list of proposed agenda items that represented a few of the many staff concerns. A majority of the staff supported it, and half of the staff signed it. (See attached e-mail message of 18 September 1997.) The top item on that list was a request for greater staff participation in decision making. The days leading up to the meeting saw much debate between management and many staff members over the meeting agenda, which management was formulating: Harris became upset that the staff wasn't embracing his agenda, and he began treating me and my coworker Graham Collins as ringleaders on the staff side, apparently becoming permanently angry at us.

At the retreat itself I asked if staff members could ask questions. Harris said no. I then said that I thought that we <u>should</u> be allowed to ask questions. Harris angrily said "No, That's an order!" Some days after the meeting he explained that he thought my request for the right to ask questions was another attempt to promote the staff agenda. At the retreat and in subsequent weeks, a number of brave

coworkers openly criticized Harris for the way in which he shut me up.

Gag order

After the retreat Harris put a gag order on me, handing me a written "notice" that implied that I would be fired the next time I said anything that Harris considered to be "counterproductive." (Document dated 26 September 1997 withheld.) This outraged many of my coworkers, who saw my forced silence as against their interest. They openly criticized the gag order, forcing Harris to rescind it. (Electronic mail message of 2 December 1997 withheld.) He did so reluctantly and without any decrease in his anger toward me.

Appeal to advisory committee

The gag order was just one of many management actions that strongly discouraged staff members from raising grievances of any sort. In an effort to get this chill lifted, a number of staff members (names withheld) decided to appeal to the Physics Today advisory committee at its annual meeting on 17 October 1997. We made our appeal to the committee, which reports to AIP's top management, in writing (memo of 17 October 1997 withheld) and in individual oral presentations. Our written note was titled, "Freer Atmosphere Needed at Physics Today" and began, "At Physics Today there is an increasingly repressive atmosphere that discourages staff initiatives...." The memo described how Physics Today staff member Graham Collins had also been warned about speaking up about workplace problems. contained the following paragraph: "Both Jeff and Graham have been outspoken about problems that many of us see at the magazine. We feel that the lecture to Graham and the written notice to Jeff both contribute to a repressive atmosphere at the magazine and restrict all of us. We hope the advisory committee will do whatever it can to get these warnings retracted, and to remind the PT managers that repression is counterproductive. Such steps would go a long way toward diminishing the fear that staff members now associate with trying to openly address problems at the magazine."

Harris has harshly criticized me for my leading role in the presentations to the advisory committee, telling me and others (names withheld) incorrectly that I tried to get him fired. He sees this as an unforgivable offense that obligates him as a matter of manly honor to fire me or eventually drive me out and that gives him the moral right to do so by any means. Those means include steps that appear honest to outsiders but are not -- such as the present performance review, which imposes an unattainable goal that can be used against me a year from now when it has

not been met. When I explained to Harris that neither I nor the other staff members involved tried to get him fired or even wanted that to happen, he replied that I was either naive or lying. (I still do not want him fired, but I can no longer speak for others on this point. Respect and support for Harris by other staff members, including some not involved in our collective activities, have deteriorated sharply.)

Ban on my private conversations

In pursuit of his agenda, Harris has evidently given Benka license to go after me and other perceived management enemies on the staff. I will briefly describe here a recent example. (A more detailed account is available.) At about 6 pm on Wednesday 28 January 1998, I was in my office talking to my coworker Toni Feder on the telephone when Benka opened the door and asked rudely and sarcastically if I was talking to one of our authors. I said, "No, I'm talking to a coworker, Toni." He acted as if he already knew that. He stepped further into my office and said that he wanted in on our conversation. This was unprecedented I switched Toni to the speakerphone and told and frightful. her that Stephen Benka was here and wanted to be in on our conversation. She sounded equally shocked. Benka suggested that she walk over from her office to mine, and she said OK. I then walked out of my office and into the open area of desks just outside, and Benka followed. I did this to make room for Toni and to get some physical distance between myself and my supervisor, who was clearly behaving very strangely.

After Toni arrived, Benka asked us what we had been talking about on the telephone. I thought his question was way out of line, but I answered it anyway: We had been discussing the May 1998 50th anniversary issue of Physics Today. But after giving that short answer, I said that the important question is why he was trying to barge in on our conversation.

He answered by announcing that Physics Today management is forbidding all private conversations between staff members at work. From now on, all conversations between staff members must be open to management supervision, he said. When I asked him why, he referred to the organizing activity that took place last year and said that he doesn't want that to happen again. This smelled like a retaliatory and repressive policy aimed primarily at me, and so I asked him whether or not it applies to everyone. He said it does. I didn't believe him (but I didn't say that I didn't believe him), and so I pressed him three or four times to say whether or not he was going to announce the new policy to the rest of the staff. His final statement was that he knows that I want to know that.

The policy was never formally imposed on the rest of the staff, of course. But news of management's anger at private conversations spread quickly throughout the staff (yes, by way of private conversations). Even though the totalitarian policy officially applies only to me and Toni, it has put a chill on everyone's expression and has contributed to the repressive atmosphere at Physics Today.

Physics Today loses Graham Collins

In this memo I have for obvious reasons focused on my own case. But I don't want to leave the impression that management is critical only of me. In fact, they target any employee who speaks out about workplace problems. My most outspoken coworker, Graham Collins, was also the subject of a gag order and other reprimands for saying what many on the staff were thinking but were afraid to say. (Graham's gag order and mine were lifted at the same time.) I won't explain here how management irresponsibly made leaving the magazine Graham's best option. The details are available elsewhere. But with permission from Graham and all involved, I am attaching a copy of a note to Graham that I helped write after he submitted his resignation. (See attached note of 16 March 1998; authors' names withheld.) Please read the note as an integral part of my performance review appeal, as it contains a number of important and relevant points not made elsewhere.

'On my case'

As I mentioned above, management is now "on my case," and so my work is now subjected to greater scrutiny. Without precedent, the magazine's management recently examined and criticized some of my work before I completed it. (That was my work on the first of the five decade sections for the May 1998 50th anniversary issue of Physics Today.) Ever since the 1997 retreat, Physics Today publisher Charles Harris has given me the impression that I am being monitored. After the retreat he attended almost every magazine department meeting that I attended -- meetings that he had only rarely attended in the past. After some meetings, he commented privately to others about my performance.

Your moral responsibility

Physics Today's new love-it-or-leave-it policy, mentioned in the 16 March 1998 note to Graham, implies that the magazine's problems originate in the staff. Keeping the focus on the staff is not simply a harmless way that management diverts attention from itself, but is extremely costly. In the short time since Graham submitted his resignation, editor Benka's assistant Susan Funk has quit in frustration, and publisher Harris's assistant Carol Lucas has resigned. The loss of experienced staff, the

discouraged state of many of those who remain, the repressive atmosphere's toll on creativity -- in general, the frustration of those who want their job to be more than a simple exchange of time for money -- in these and other ways current policy wastes the resources of the physics community. You have a responsibility to undo the current widespread cynicism at Physics Today by making staff-initiated change possible.

18 August 1997

Steve --

As I have noted in many conversations and memos over the years, I work most efficiently in my job of feature article editing when I have articles at all stages of development. That means, for example, some articles that have just been solicited, some that have been submitted and reviewed, and some that have been revised by the author and are ready to edit.

As you know, our supply of articles in the last category has followed a "feast or famine" pattern -- mostly famine. This has held down my productivity to the point where I cannot afford to take the full 30-day vacation that I recently requested (and that you approved) and still meet my annual article editing goal. So I am thinking about cutting that vacation in half, perhaps, and using the rest of my vacation time at some later date. I won't be able to work out the details until some articles in the last category trickle in and I can draw up a schedule.

As of today, we have received neither of the two manuscripts that I am going to edit for the December issue. I would be working on them now if we had them. The Riordan manuscript, for example, is not expected to arrive until around the time I had planned to go on vacation. And I have no articles that I can edit now for issues following December. I would like to edit two articles for the January issue and two for the February issue, but I will not be able to do that under our usual famine conditions -- I will need to have the manuscripts much earlier than I have been getting them. If today I had four manuscripts ready to edit for those two issues, I could work on all four simultaneously, using my time to greatest advantage. think you will agree that the magazine should be in a position where such productivity and advance work is routine.

Given the status of the December manuscripts, a 30-day vacation as planned would compromise my ability to edit two articles for that issue. I would like to take a shorter vacation and continue working at home much of the time, as long as that continues to work well. Please let me know if that is OK, and in any case please see how soon I can have four articles that are ready to edit for the January and February issues.

Jeff

Jeff,

It is the responsibility of the article editors at Physics Today to produce finished articles starting from any point in a given article's development.

Thus the responsibility of generating "ready to edit" articles is in part yours. For one example, we had agreed that you would obtain Colson's article on free-electron lasers, and have it edited in case we needed it for an emergency fifth article in the October special issue on the electron; otherwise we could drop it into the magazine a month or two later. Fortunately, we don't need it for the special issue; to my knowledge you have yet to acquire the article.

You were my first choice to edit several articles in late stages of development in the recent past, but turned them all down: Fink (March); Cohn (May; I edited that one, while you edited none that month); Jeanloz to edit with Soulen (August); a second article for October (you were reluctant to take Perl); Kasap for November.

As recently as two months ago, when you wanted to take paternity leave (which I OK'ed), you told me you didn't want any additional articles through the end of this year. As noted above, I offered you some anyway and you turned them down. You expressed no interest in articles, so I left you out of my plans for them.

I understand your special circumstances and once again offer you my heartfelt congratulations on the birth of Joshua Rose. If you are now ready once again to accept the responsibilities that go with feature articles, I can supply you with as many as you want. The articles that are currently "ready to edit" have been assigned to others. Nevertheless, I am sure we can reach a mutually acceptable state of affairs.

S 000544

PHYSICS TODAY

from Stephen G. Benka

Jeff, As we discussion,
as of today we are shifting
your jet tasks slightly:
Actual editing goes from a
weight of 80% to 70%.
Following up on solicited
articles goes from 15% to 25%.

Steve
8/25/97

Steve --

Thank you for responding to my note of 18 August 1997, in which I ask for more work -- specifically, more feature-article manuscripts that I can edit for publication in the magazine ahead of deadline. I was dismayed to find that instead of welcoming my request, your response focuses on assigning blame for the lack of such manuscripts and goes on to deny that we have any such deficiency.

You base the first part of your response on the fact that Physics Today staff members do follow-up work with the people whom you have invited to write articles for the magazine. You note that these staff members are therefore "in part" responsible for obtaining manuscripts that are ready to edit for publication. All this is true, but our severe shortage of such manuscripts is not due to deficient solicitation follow-up work by the staff as you imply. The article editors on the staff have, in fact, done a good job of following up on solicited articles -- staying in contact with the authors and working with them to produce the articles that you have asked them to write. If you think you could do better than we do, you should share your secret. For whatever it is worth, my experience is that when a conscientious and hardworking staff is blamed for a long-standing problem, the diagnosis is usually incorrect, and an incorrect diagnosis is an impediment to a real solution. (In my own case, according to my job description, solicitation follow-up has been a small part of my job; but I work at it conscientiously, and on my latest annual review you said that I do above-average work in this area.)

No, the problem is not your staff's lack of competence in its follow-up work with authors. The problem is simply that the magazine has solicited far too few articles. This has had unfortunate consequences, not only for the staff (as my note of 18 August 1997 describes for my case), but also for the magazine's subscribers. In the past three years I doubt that we have had even three months in which we have had a backlog of manuscripts ready to edit. Typically, the editor scrapes each issue together in a near-crisis atmosphere, after a desperate search around the office for manuscripts that may have arrived -- or that are said to be "in the mail." The lineup of articles in most issues of Physics Today is thus dictated by forces beyond our control.

Your listing of manuscripts that you say you offered to me begs the question of giving me more manuscripts that I can edit and prepare for publication, because we did not have the manuscripts on your list. In your own words, they were "in late stages of development." I should point out that even manuscripts that you consider ready to edit often are not. And when the shortage of manuscripts forces us to schedule incomplete manuscripts for near-term publication, we often have to pressure authors to work with us under undo

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time pressure. This is unfair to both the author and the Physics Today staff, because it deprives them of the opportunity to do their best and therefore most satisfying work. The largest group to suffer; of course, are the readers. I don't know how many of the articles that you listed fell into that category, because I did not work on those articles.

As I said in my memo of 18 August 1997, I think article editing work is done most efficiently when it is done well ahead of the deadline. So in general I seek to work in advance and am reluctant to take on articles that, due to the shortage, will necessarily have to be done at the last minute, often after I have already scheduled work on other articles and often well after any reasonable deadline for submission. Month after month our work should not consist of "rush jobs" for issues that are upon us. I would have taken on the articles in your list if they had been scheduled for later issues -- or, even better, if they had not yet been scheduled for specific issues. But because of our serious lack of manuscripts, it has almost never been possible to work ahead.

In your response you say that I "agreed" to obtain William Colson's article by a particular date. This cannot be true. There is no way that I or any other Physics Today staff member could credibly "agree" that Colson and his coauthors would finish writing their article by a date that you picked arbitrarily. Only Colson and his coauthors -all volunteers, remember -- could do that, and they did not. We cannot suddenly and unilaterally spring a short deadline on an author. The most we can do is ask our authors if they can meet such a deadline. Over the years you have asked many authors whether or not they could meet particular deadlines that you had in mind, and you have accepted later deadlines when they told you what they could do. Just because you are now talking to a staff member, rather than directly to the author, doesn't mean you can "just say article" and have it appear.

In the final paragraph of your response to my request for manuscripts, you boast: "I can supply you with as many as you want." This is simply not true. In fact, when we spoke after I received your response, you could not supply even one manuscript that I could edit for the January issue, the February issue or any subsequent issue. Of course, we will eventually come up with something to fill the holes in those issues. But, as usual, that is not likely to happen soon enough to allow us to work ahead. I am sure we could continue to pretend that this modus operandi is not a serious problem -- after all, we have managed to get by with it for a number of years. But it takes an unnecessary toll on many people, and so I think we have a moral responsibility to the staff (article editors, editorial assistants, art editor and copy editors), authors and

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readers to solve the problem. I think the obvious first step is to admit that we do have a serious shortage of manuscripts and that the shortage leads to the problems that I have described here and in my note of 18 August 1997.

As I mentioned above, solicitation follow-up work has been only a small part of my job -- at least that is what I thought. When I saw how much you emphasized it in your response to my note, I took a look at my job description and noticed that such work was a bigger part of my job than I had remembered. Upon further investigation, however, I discovered that you had altered my job description after the fact to add truth to your claim. Indeed, the altered job description was dated 19 August 1997, the same date carried by your response to my note. For future reference, let me say here that I and other members of the staff prefer an above-board management style, where, for example, important changes are pointed out to people rather than being left for them to discover -- or, perhaps, not discover. In any case, you and I discussed the change in my job description on 25 August 1997, and I agreed to it. Thus, I will increase my solicitation follow-up work by about 2/3 and reduce my article editing by 1 part in 8. (I will continue to spend the large majority of my time on article editing.) Because of my preference for doing things above-board, I asked you to write me a note describing the change in my job description, and I thank you for doing so.

For the record: In your response to my note, you say that you OK'd my request for paternity leave. My recollection is that you neither approved it nor denied it, because I withdrew my request before you responded.

So that we don't wander too far from the original issue, let me repeat that I made my 18 August 1997 request because I felt that I was being held responsible for a particular amount of work (my annual article-editing goal) while being made to work so inefficiently that I could not do that amount of work -- at least not with sufficient time left over to take some time off. My revised job description will lessen slightly my need for ready-to-edit articles, and so should provide some relief in this area.

The Riordan manuscript has just arrived, and I would like to work on it now, so as to finish it as far ahead of the deadline as possible. Unless you tell me otherwise, that is what I will do. Perhaps I will take some vacation time later, depending in part on what other work comes in.

S 000548

From:

'Martin L. Perl' <martin@SLAC.Stanford.EDU>

To:

Jeff Schmidt <jds@aip.org>
2 Sep 1997 (Tue) 17:13

Dātē: Sübject:

Leptons After 100 Years Article

Dear Jeff

Thank you for changing my ugly duckling of a manuscript into a beautiful swan. You have done a wonderful job.

I have the following comments:

Page 35, column 2: the ***** in *See box 1 on page ****** 36 has not been inserted yet.

Page 39, column 2: the ***** in *See box 2 on page ****** 40 has not been inserted yet.

Page 36, bottom equation in column 2: space required between virtual and 20.

Page 38, Figure 4: TAU DETECTION scheme might be changed to TAU DETECTION apparatus.

Page 40, Box 2, column i: yes, each h should be an h-bar.

Page 40, References: the names in Ref. 3 are spelled correctly; in Ref. 10 the page number is 2074; in Ref 16 the page number is indeed 79c, it is a conference proceedings and every page has a c added to the page number.

Thank you so much Jeff for all your helpa dn guidance. I am greatly looking forward to the issue.

Sincerely yours

Martin Perl

From:

"George Crabtree" <george_crabtree@qmgate.anl.gov>

To:

"Judy Barker" <jbarker@aip.acp.org>

Date:

15 Apr 1997 (Tue) 19:24

Subject:

Vortex Article

Subject:

Time: 5:26 PM

Vortex Article

Date: 4/15/97

Dear Steve, Jeff, Barbara, and Judy, I just received the offprints for our article on Vortex Physics in the April issue of Physics Today. What fast service! The article looked very good in the magazine, and I got a warm feeling on finally seeing it in print. Thanks to all of you for your efficient and competant efforts to bring the article out. For David and me, it is gratifying to see the fruits of our work appear with such high production standards. Thank you all once again. Sincerely,

George Crabtree - MSD/223 Argonne National Laboratory 9700 S. Cass Avenue Argonne, IL 60439

phone: 630-252-5509 : 630-252-7777

fax: 630-252-7777 e-mail: crabtree@anl.gov

CC:

"David Nelson" <nelson@cmt.harvard.edu>

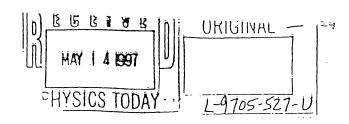
Letter to the Editor Review Form

	L-9705-527-U Weinstock, Robert
Title:	Comments on "Probing the Faintest Galaxies, April 1997
Review by: js	Date Assigned: 5/22/97 Date Completed:
Accept	Reject Staff Revise Author Revise
I thin	k a lot of our readers would appreciate an enswer
to the	question that Weinstock ratses. I suggest
٠, ۵	It I a letered latter see enclosed
e dited	version) along with an answer from Ferguson
	-J5

Please return to Susan Funk by 5 June 1997. Many Thanks!

Review by :	Date Assigned:	Date Comp	pleted:
Accept	Reject	Staff Revise	Author Revise
oK	. Get	Ferguson	is response.
	_6	Tev 6/3/97	L

S 000551



Letter to Physics Today:

In "Probing the Faintest Galaxies", by Ferguson, Williams, and Cowie (April 1997), the caption to Figure 1 reads, in part, "For most of the galaxies in the image, we are looking back more than half the age of the universe".

This claim seem strange to me; for radiation emitted so long ago must have had its source so close to Earth at the moment of emission — according to the generally assumed big-bang origin of the currently expanding universe—that it would have reached Earth, if at all, well before the era of telescopes, spectrometers, and, of course, us. That this is so springs from the fact that no source can recede from the earth at a speed greater than that of the radiation — namely, c.

To derive this conclusion, let us measure all times and distances relative to Earth's rest frame and let

t = measure of time, from big bang at t = 0

T =age of universe (= time elapsed from big bang to Earth's receipt of radiation from source)

 θ = time after big bang at which radiation is emitted from source

 \overline{v} = average speed of separation of source and Earth from big bang (t = 0) to emission of radiation ($t = \theta$).

Thus the total separation of source and Earth at time of emission — i.e., the distance the radiation travels at speed c from source to Earth — must be $\bar{v}\,\theta$, and the time elapsed during the radiation's journey is

$$T-\theta=\frac{\overline{v}\,\theta}{c}\,,$$

₹0

from which follows

$$\theta = \frac{1}{1 + (\overline{v}/c)}$$

And from $0 < (\overline{v}/c) < 1$, — i.e., the limiting feature of the speed of light

we conclude

 $0.5T < \theta < T$.

(10th

Any radiation we receive today must have been emitted than eforce at least half the age of the universe after the big bang.

How, then, if the above analysis is sound, do Ferguson, Williams, and Cowie — along with others — suppose radiation to have reached Earth in the 20th century from a source that was, at moment of emission, farther from Earth than (cT/2)? Since they evidently infer emitter distance from the doppler shift magnitude, a ready to-mind answer is their use of an erroneous relation between emitter distance and doppler shift measurement

If however there is something wrong with my analysis above, I shall

be grateful to have it explained to me.

Robert Weinstock

Robert Weinstock

Emeritus Professor of Physics

Oberlin College

Oberlin, OH 44074

ZWEINSTOCK@OBERLIN.EDU

(216) 775-8337

Jeff: Spured by your review, we are planning to publish weinstacks letter [0]; Fergus on [0] suggests we read his response [3] and consider publishing. Harry Ferguson <ferguson@stsci.edu> neither. What From: ACP.AIP(pelliot) To: Date: 7/28/97 10:37am Subject: Reply to Weinstock letter. Dear Paul, 27 JUL 97 Here is our reply to the letter to the editor. Actually, we wouldn't recommend publishing either the letter or our reply, as this sort of basic question about light travel times seems a bit out of place for your letters section. Perhaps you should forward our reply to Dr. Weinstock directly and see if that S.B.: Weinstock letter below, satisfies him? followed by Forguson reply. Forguson recommends we not publish either. So does thas. Sincerely, Harry Ferguson Teff says offernik - See rext page. I suggest we Weinstock Letter to the Editor In *Probing the Faintest Galaxies, * by Henry Ferguson, Robert weinthek Williams and Lennox Cowie (PHYSICS TODAY, April, page 24), the figure 1 caption reads, in part, *For most of the galaxies in the image, we are looking back more than half the age of the answer universe.* sufficer This claim seems strange to me. Radiation emitted so long tor ago must have had its source so close to Earth at the moment of himi emission*according to the generally assumed Big Bang origin of he the currently expanding universe*that it would have reached Earth, if at all, well before the era of telescopes, fcel spectrometers and, of course, us. That this is so springs from publication the fact that no source can recede from the earth at a speed greater than that of the radiation*namely, c. A simple his calculation, in fact, shows that we are looking back through less than half the age of the universe. Can it be that Ferguson et lack al. are using an erroneous relation between emitter distance and of doppler-shift measurement? If there is something wrong with my analysis, I shall be grateful to have it explained to me. > @SIGNATURE = ROBERT WEINSTOCK (zweinstock@oberlin.edu) > @ADDRESS = > @ADDRESS = Oberlin College > @ADDRESS = Oberlin, Ohio Hugwon et al. repy The redshift distribution of the galaxies in the HDF is not known |8/13|47precisely, however, a very conservative guess based on Keck spectroscopy of the brighter galaxies and the colors of the fainter galaxies is that more that half the galaxies have redshifts z > 0.8.

The statement made in the caption of figure 1 comes from a

calculation of lookback time to a galaxy at z = 0.8. For a critical-density universe with a cosmological constant lambda = 0, the lookback time is

tau = 2/3 H_0^-1 (1-1/(1+z)^(3/2)) and the present age of the universe is t_0 = 2/3 H_0^-1 where H_0 is the Hubble constant.

For this cosmology, a galaxy at z=0.8 has tau = 0.6 * t_0. In other words the lookback time is more than half the present age of the universe.

A general expression for the lookback time with arbitrary values of the cosmological constant and density parameter is given in Carroll et al., 1992, Ann. Rev. Astron. Astrophys., 30, 499 (equation 16).

Henry Ferguson Robert Williams Lennox Cowie

Paul -

Weinstock's question should get a physical explanation

As an enswer, not a mathematical one like this.

— say drop the mathematical one, don't just

add the physical one to it. Perhaps ask

Ferguson't Co. to write what they would say to a

for radioaudience)

Wigh-school student who noticed this seeming

contradiction. One possible teason that Feraiet Co.

answered as ling did is that they don't really understand

the physics.

-Jeff 28Jul97

S 000555

PHYSICS TODAY from Stephen G. Benka

Paul,
Forward Ferguson's
response to Weinstock
We won't publish
lither the letter or the
response.

Steve 8/19/97

S 000556

33.1

Scientocracy

Vannevar Bush envisioned a brave new world run by scientists.

ENDLESS FRONTIER

Vanhevar Bush, Engineer of the American Century By G. Pascal Zachary. Illustrated 518 pp. New York: The Free Press. \$32.50.

By Thomas P. Hughes

URING World War II, Vannevar Bush mobilized America's engineers and scientists, presided over the making of the atomic bombs, advised President Truman on the decision to use them against Japan and, in a memorable essay entitled "Science — The Endless Frontier," formulated a bold policy for the country's postwar cultivation of science and engineering. He defined, as well, the military-industrial-university complex and gave it the impetus that propels it today. As G. Pascal Zachary observes in "Endless Frontier," no wartime figure in the world marshaled such enormous engineering and scientific resources.

Born in 1890 in Everett, Mass., Bush cultivated his scientific interests while a mathematics student at Tufts and a graduate student in electrical engineering at M.I.T. In the 1920's, when American engineering was in transition from the improvisatory pragmatism of the past to the science-based approach of the future, Bush became known for blending traditional scientific values with the emerging professional ones. At ease in the machine shop as well as in the laboratory, he spoke of himself as using both the hand and the

M.I.T. which was in the vanguard of this professional transition, adopted Bush as an exemplary faculty member and later named him dean. He won worldwide peer recognition as the foremost designer of electromechanical analog computers. Decades later, his Atlantic Monthly article "As We May Think" spread the notion of mechanizing the storage and retrieval of information, an idea that fired the vision of several computer pioneers. Zachary, a business and technology reporter for The Wall Street Journal, has aptly subtitled his biography "Engineer of the American Century."

Bush assumed that men of brains, Judgment and good will would rise to positions of responsibillty in the engineering and scientific world. (He was not at all sure that this was true in political and military realms.) An elitist holding high academic standards, he believed that university engineers should reach out to render public service. not only solving problems assigned to them, but helping to formulate policy as well. This agenda would bring him into sharp conflict with the

Washington establishment.

After World War II began in Europe, Bush, answering a call from Washington to mobilize engineers and scientists for national defense, put together the Office of Scientific Research and Development. Contemporaries called it the greatest research and development organization in history. Its story has often been told, but Zachary goes deeper to explore Bush's influential and often controversial views on the role of experts in a democracy, an issue that surfaced then and that remains only slightly below the surface now

Bush and elitist science associates like James

Thomas P. Hugbes is a professor of the history of science and technology at the University of Pennsylvania and M.I.T.

Conant, the president of Harvard, sharply criticized the military for not developing strategy and tactics that incorporated new weapons, such as radar and the proximity fuze. Bristling with impatience. Bush used his direct access to Franklin D. Roosevelt, as well as his freedom from Congressional oversight and his huge budget, to bring pressure on generals and admirals to accept scientists and engineers as partners in making policy.

Turi battles were inevitable. The Chief of Naval Operations, Adm. Ernest J. King, a formidable opponent, accused Bush of "trying to mess into things in connection with the higher strategy which were not his business, and on which he could not have any sound opinions." Other officers scornfully dismissed the civillan experts as men without combat experience.

Bush's advocacy of unfettered scientific expertise brought criticism from the politicians as well. The United States budget director, Harold Smith, declared that Bush "is too much influenced by the assumption that researchers are as temperamental as a bunch of musicians, and consequently we must violate most of the tenets of democracy and good organization to adjust for their lack of emotional balance." "Most of them," he added, "do not know even the first thing about the basic philosophy of democracy.'

Undaunted, Bush, according to one colleague, talked "straight to generals and cabinet officers and the President," and made them "take It." After fierce confrontations, he would sometimes withdraw in the evenings to Washington's exclusive Cosmos Club and negotiate with his opponents over a bottle of Scotch. He often prevailed.

Jerome Wiesner, John F. Kennedy's science adviser, thought that the 20th century might not again produce Bush's equal in engineering and science policy. Alfred Loomis, a knowledgeable science patron, investment banker and radar expert, concluded that among the men whose death in the summer of 1940 would have caused the greatest calamity for America, Roosevelt was first and Bush would be second or third.

Y war's end, however, Bush was bonetired, broken in spirit and bereft of influence. Finding the Truman Administration's science policies suggestive of a chapter from "Alice in Wonderland," he left the Government in 1948. In his last great effort, he tried and failed to establish a National Research Foundation, a peacetime replacement for the research and development office, one that would cultivate fundamental science both for military and civillan uses. He wanted peacetime science unfettered by political controls, but failing to perceive a growing call for public accountability, he aroused overwhelming opposition. James V. Forrestal, the first Defense Secretary, observed that 'even with both ears to the ground," Bush did "not hear the rumble of the distant drum."

Deeply informed and insightful, Zachary has thoroughly captured the spirit of Bush and his times. In evaluating the man's legacy, he honors Bush as a role model for his generation's engaged engineers. But Zachary is impatient with Bush for resisting people whom he considered government interventionists, intent upon pursuing science primarily for the ill-fed, poorly educated and underemployed. Zachary is surely right in concluding that Bush's single-minded support of elltist universities and his advocacy of the "free play of free intellects, working on subjects of their own choice" would find little support in Washington today.

and a state of the same of the

the Atomic Age

Vannevar Bush, Engineer of the ENDLESS FRONTIER American Century By G. Pascal Zachary

By Gregg Herken

Free Press. 518 pp. \$32.50

tends to ignore the fact that the Manhattan Project was primarily more temperamental—and hence color-ful—physicists involved. Journalist G. Pasthe making of the atomic bomb most of their attention upon the been written about engineering effort. Historians have lav-LL that has ished

cists Ernest Lawrence, Robert Oppenheimer and Edward Teller. Smithsonian, is writing a book about physi-Gregg Herken, a historian at the

dent of Harvard-whom he described as a

4

"square-shooting, level-headed liberal." The pairing of Bush and Conant created

of the most remarkable intellectual partnerships in the modern history of science and technology, but it receives disappointingly little treatment in this otherwise

An inveterate tinkerer, Bush invented marines, a code-breaking machine, a solar-powered pump, and the "differential analyzer"-an early, mechanical version of the computer. In the mid-1920s, he co-founded Raytheon and was made wealthy by the before he was 40 a device to detect sub-"Bush's greatest invention was not a thing but an orgaography of an engineer who was once the doyen of America's scientific establish-Vannevar Bush was a prototypical ment, takes a major step toward setting the Boston Yankee whose father was a Universalist preacher and grandfather a sea cap record straight.

reflected those origins. (His "screwball" first name was borrowed from that of a tain. Bush's flinty persona and wry humor Bush received a PhD in electrical engifamily friend.) Educated at Tufts and MIT

nization-the National Defense Research Commitee.

85.5 became president of the Carnegie Institusubsequent growth of the electronics ant In 1939, on the eve of World War II, tion in Washington, D.C.

Yet Bush's greatest invention was not a thing but an organization-the National Defense Research Committee-which he

neering in 1916 and set about to broaden

his horizons: "I resolved to learn about

tional Academy of Sciences panel dithered the nascent atomic bomb project, which hidebound bureaucrats and flighty physicists had left dead in the water. When a Naas to whether a bomb was possible, Bush added a handful of engineers and sent them back to the drawing board; the panel decided the bomb was feasible after all

and the NDRC's success in jump-starting

n time to mobilize the country's scientific brainpower for the coming conflict. The quality that Bush typified and that he valaed most -- the ability "to think straight in the midst of complexity" -- was key to his

ind President Franklin Roosevelt created

men as well as things."

-Continued on page 5 his own limitations. "Most of this was over my head," he readily admitted to physicist ies of fission. Accordingly, Bush teamed up with, another, Bostonian-chemist, James Bush also had the talent to recognize colleagues who were probing the myster-Conant

courageous acts that received little or no Bush spoke out in Robert Oppenheimer's where the physicist was being pilloried for his opposition to the H-bomb. While for ribbon panel studying disarmament, Bush tried to postpone the explosion of Ameria ban on such tests could be explored by defense at the latter's security hearing, naught, Bush's heroic stand at the Oppenneimer hearing was arguably his finest public attention. In 1952, while on a blueca's hydrogen bomb until the possibility of Two years later a curmudgeon ruman's successor. coming simply as a threat, and the cronies and pols who

ing cultural values, Zachary's book gives a standing "at the mouth of the cave with a few strong men of the clan armed with In an era when science as well as histoglimpse into a simpler time. Vannevar that has now vanished. Bush evoked the ry is said to be only a reflection of chang-Bush was the exemplar of a generation attitudes and standards of that generation when he wrote, in December 1940, of stone axes against a hostile world." hour.

NNEVAR BUSH' &

excellent book. (Readers are advised to

consult Jim Hershberg's brilliant biogra-

phy of Conant, which can be read as almost a companion volume.) When World

er, umbrella organization—the Office of and assigned the NDRC to Conant. To-

Scientific Research and Development-

War II finally arrived, Bush created a larg-

Vannever Bush in 1947

government-funded research to "supplement" rather than compete with work done by the military services. Predictably, however, the Pentagon viewed Bush's plan

pared for Roosevelt as victory approached; he intended it as his legary. Like the NDRC and OSRD, Bush wanted peacetime

port of scientific research that Bush pre-

the 192-page plan for postwar federal sup-

'Science-The Endless Frontier"

facto science advisers.

ernment by experts. Blocked at every turn, Bush could do little but complain and wax Bush's real goal was a technocracy, a govnostalgic about the halcyon days of the tism became an ossified suspicion of the He was most famously wrong about ballistic missiles-"I think these things will be just too expensive and inaccurate to use, even if they could be built"-but his attachment to the analog technology of his surrounded FDR's successor, Harry Tru-man, also feared—with some reason—that war. He finally left the government in 1948. Over time, Bush's hardheaded pragmaпеж.

coming of the information age. (In one area, Bush's naysaying may only have putting people in space was merely a differential analyzer likewise blinded him to the potential of digital computers, even though he was one of the first to herald the that would eventually "bore the been premature. He warned in 1960 that public" and "kill some promising youngsters in the process.") 'stunt"

In retirement, Bush was saved from be-

of the decisive weapons

victory—radar, the proximity fuse, and the bomb-but also became Roosevelt's de

ment

gether, the duo not only oversaw develop

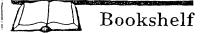
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Arms and the Man

By ERICH EICHMAN

It is odd to think that a man whose face appeared on the cover of Time magazine in 1944, and whose death occasioned a front-page obituary in the New York Times 30 years later, should be all but forgotten to-day. But such is the fleeting fame of the



"Endless Frontier" By G. Pascal Zachary

technocrat. Vannevar Bush was much more than that, of course. He was a pioneering engineer and inventor, an entrepreneur, a visionary and a social philosopher whose "Modern Arms and Free Men" was a 1949 bestseller and whose hymn to science (and appeal for funding), "Science—The Endless Frontier," caused a sensation when it was released in July 1945.

But his glory years were spent in Washington heading up various technocratic entities (the Carnegie Institution, the Office of Scientific Research and Development), advising presidents, pulling strings on Capitol Hill, worrying over funding, and overseeing projects, most notably the secret one that produced the first atomic bomb.

In his way. Bush was a precursor of the "Wise Men." the elite insiders who guided U.S. policy in the postwar years. His influence reached its height under Roosevelt and laded precipitously thereafter, but his concerns—the relation of science to government and the military, its role in society—are still very much with us.

No doubt Bush would have welcomed our computer revolution, for he was essentially an optimist who saw technology as a force for good. Most important, during the crisis years of his greatest prestige and authority—when the country was at war or preparing for it—he argued (presciently, convincingly) that science had something assential to contribute to national defense, especially if civilian researchers were allowed to do their work unmolested by military bureaucracy.

Journal reporter G. Pascal Zachary has brought this able, conscientious, energetic and wrongly forgotten man to life in "Endless Frontier: Vannevar Bush, Engineer of the American Century" (Pree Press, \$18 pages, \$32.50). A few excerpts:

In the 1930s: "While innovation was

In the 1930s: "While innovation was clearly becoming corporatized. Bush still believed that the 'lone researcher often does produce out of thin air a striking new device or combination which is useful and which might be lost were it not for his keenness." Bush was himself just such an irrepressible inventor. While an astute manager of research teams, he often pursued his grandest intuitions alone. Rapid retrieval of personalized data, stereonbo-

tography, typography, internal combustion engines and perpetual motion werejust a few of his obsessions. For hlm, inventing was a calling, a way of life."

At the commanding heights: "Intenselyself-assured, [Bush] deferred to no one, save Roosevelt and his mentor, Henry Stimson, the secretary of war. In the heat, of war, his penchant for barging ahead worked wonders. The military gave more: leeway to him than perhaps any other civilian in the war. Members of Congress: granted his every request. Never once did we ask for funds and fail to secure them promptly,' Bush later boasted. Legislators. rarely even questioned him, and when they did the exigencies of war made it possible for him to duck the tough queries anyway. He never flatly refused to satisfy. a. politician's curiosity, but rather dared him to comprehend the technical and militaryissues. Most politicos wisely kept their mouths shut.

The response to Bush's 1945 reporter "Business Week called Science—The Endi-less Frontier" an epoch-making report that is must reading for American businessemen. The Washington Post applauded!—Bush for delivering a 'thorough, careful!—plan for putting the needed push of the ledgeral government behind our scientific progress. Only a handful of commentators questioned Bush's basic principles that research deserved broad public fundating. The Wall Street Journal, for example, argued that tax incentives could achieve a similar result by Inducing private industry to spend sufficiently on research."

After the war: "[Bush] shared with? other elitists a stark and not altogetherdistorted view of American society that: plitted sober, pragmatic elites against the untutored, volatile masses. For Bush, Truman and his cronies as well as most congressional leaders clearly fell into the 'masses' category. While Truman delighted in casting himself as an ordinary; American, Bush-and other elite leaderstended to view such citizens as irresponst? ble and sometimes irrational. The elite as: sumed that the mass of Americans neededpatriarchal authority. In Bush's view,civilian technocrats were the solution to: the inherent contradiction between the imcreasingly complicated problems facing, government and the nation's democratic traditions. In practice, this meant that the public must pay for experts to make decisions in its name; these experts wouldbrook little or no interference.

Looking back, in the 1950s: "He worn dered whether men could 'live without war.' Now that 'the glamour of war.' Some, he asked whether the kind of direct combat 'that once had a real appeal for the red-blooded man' was obsolete. Others had noted that modern technology had made war impersonal and that the 'virile attributes' of war, which enlivened societies in the past, would have to arise from another source. But Bush's romantic yearning for an earlier stage of combat seemed peculiaring iven his role in exploiting the very technologies that further dehumanized war.

A vivid tale of an American science czar

By David Warsh

oosevelt called me into his office and said, 'What's going to happen to science after the war? I said. It's going to fall flat on its face. He said. What are we going to do about it?" And I told him, 'We better do something damii quick.' "

Those are the words of Vannevar Bush, longtime professor at the Massachusetts Institute of Technology and America's sciende czar in World War II. They evoke the Washington manners of 1941. When those in positions of responsibility understood that they trod upon a historic stage and spoke and split slipped sentences easily.

Bush had served as Robervells science adviser since June 11110 avarageing the devel-opment of lider the computer.

erect and the hurry. responded with a famous report.
Science—The Andless Frontier, syntactions the work of a
series of bimerical committee. tees. Though much battled over in the corridors of power, herfrom the less became the bhar print for the nexts between tovernment, industry and acs demia that has lasted to the pre-

More than any other person, it was Bush who designed America a mitional ayelam of innova-tion in the post-World War II erd the universities directing bank meeting at numer paying the bills and or porations concentrating on belief research, somewhere in

This was a good deal more feridamental than, say, thinking up the interstate highway sys-ters or inventing the television networks It could be argued -(Maring democracy aside) that it was the limovation system more

Commentary

accomplished in the years between 1939, when he went to Washington, and 1954, when he left full-time government service and returned to MIT.

Yet even Bush's failure to adjust after those great days underscores the importance of the forces he had set in motion. And in Zachary's hands, the human forces behind the strange twists of technological developments are always available for inspection.

Named for his father's roommate at Tufts College, Bush went to Tufts himself. Afterward, with his Tufts roommate. Lawrence Marshall, he started a firm to make radio tubes that they called Raytheon. The firm was a success, but Bush went on to teach electrical sugment, the at MIT, where it planes of in devaloping analog computars. Duty called in 19397

By far the greatest part of Zachary's book concerns the war years. And here the stories or are just too numerous to do more than list. The author's day job is as a reporter for The Wall, Street Journal in San Francisco. He has a journalist's eye for : ,;; color and knack for narrative in has a historian's ear for

desput concerns. Manhattan Project with yarns of Bush's association with the Office of Strategic Services; stories of the FDR cabinet with, anecdotes from scoundrel time (One of his finest moments are any came when he went to but for hi Robert Oppenhelmer, whom he saw an victim of technological differences of opinion.)

It turns out to have been a tar more complicated world than Bush had contemplated: Baltles over federal funding of science are recounted. Bush favored winding down the military's role in funding science at the conclusion of the war, President Harry Truman overrode him in 1945. When the National Science was the filliovation system more 1945. When the National Science Change with more with the Folindation Intelly was created. Next Generalicit at Microsoft Control of the Folindation Intelly was created. Next Generalicit at Microsoft Control of the Folindation Intellectual Public Build inagined. He is a senateable chronic of the spency he had imagined. He is a senateable chronic of the was too little foo of development the major place of the variety of the foliation of the foliat

By the 1970s, U.S. Industry found itself in a paradoxical situation: 'Awash in theoretical knowledge, it was starved for the basic processes and products that lead to victories in commercial contests,' according to a new blography of Vannevar Bush.

with Elsenhower, George Marshall and Chester Nimitz suddenly was a voice that found its . fullest expression against the new: against guided missiles " and satellites, against the race to the moon against consumer-ism. He served to good effect on corporate boards, with the pharmaceutical company Merck in particular. His son founded Millipore Filter Co., he himself reised turkeys in New Hamp's

afilre. The world was far more bottom-up than the top-down world he lavored, and, accord-ing to Zachary, this had deleterintegrated in America's compet-litive position in the world seconomy. He writes: The great detect of Science—The Engless infrontier was its neglect of Industrial innovation." Science was lionized as the source of all progress; invention and commercial engineering were fobbed off as subsidiary bancerns. The result was that by the 1970s, U.S. industry found that in a paradoxical situation: "Awash in theoretical knowledge, it was gtar vid for the basic processes and products that lead to vieto, view in commercial contests. "Oligopolistic market structure"). may have had something to do with It, too.)

Nobody knows better than Zachary how it was that, in key industries at least, American businesses fought their way back to positions of global supremacy. His first book. Show-stopper. The Breakneck Bace to Create Windows NT and the

the end of the book, we understand that Cutler (once a top Digital Equipment executive) in his way has been just as effective in welding together a team hell-bent on a fixed objective as was any of Bush's minions in the war-with no higher author ity behind Cutler than Bill Gates, the business strategist who built Microsoft on little more than his understanding of what it meant to be the stan-

Gates commands a research and development effort as exten sive as any ever communded by Bush And the commordaliza tion of research and develops ment that began when international Business Machines move into computing and American Telephone & Telegraph developed the transistor (and then stood by while difficult Valley took its development to the next stage) has gone far beyond what he contemplated.

Which just soes to prove the point. Wantever its coliciencies as a plant of sixton the outline. that sketched in Science. The Rndless Frontier have evolved into a pretty good map of the territory. The relationships between the regions are better understood to are the possibilities for falled communication. The boundaries themselves seem a little more finite, the competition for resources a little more intense.

to But veterans of a hundred cowboy movies know what hap pens next. Some guy comes Through with a roll of barbed wire, or a motor car, or a machine guit, and it's off to the races again. The frontier is for-'eyer closing at least as origihally understood. And how vistas are opening all the time.

San Jose Mercury News, 31 August 1997



TAPPED OUT: Beer industry's love affair with marketing resulted in some flat sales. Page 4
AUDIO 'AMBUSH': Tom Wolfe's first fiction in a decade gravels the recording route. Page 7

A well-engineered life

🛚 Vannevar Bush devised policies that altered our lives

ENDLESS FRONTIER: Vannevar Bush, Engineer of the American Century By G. Puschal Zarhary Free Press, 490 pp., 532.50

BY PAUL PREUSS

CHAMPION of scientific expertise in government, Vannevar Bush's name and foce were all over the covers of Time and Fortune and Newsweek in the 1940s, but today — except for the nuistaken impression that Bush foresaw the personal computer and the Internet — few remember him. Wall Street Journal reporter G. Paschal Zachary has performed a valuable service with this admirably detailed biography of a man who not only was the 20th century's leading American engineer, but who in a real sense engineered the American century.

How should history judge a man who described many of features of the PC in 1945 and inspired the pioneers of the personal computing movement, but who disparaged digital electronic computation? Bush built an enormous mechanical computer of brass and steel, known as a differential analyzer, as ear ly as 1931. Although he helped found Raytheon in 1924 to manufacture better and cheaper electronic tubes for radios, he never lost his affection for analog computing machines. The memory in Bush's proposed desk-sized "memex" (never built) would have consisted not of magnetic tape or disks but of reels of microfilm.

How should we assess the vision of someone who headed NASA's predecessor organization, the National Advisory Committee for Aeronautics (one of his first acts was to establish a research center in Sunnyvale), but who thought rocketry was a waste of time and tild his best to discourage the development of satellites, intercontinental ballistic nuissiles and moon rockets?

The middle years of the century, the years of World War II when Bush was at his acrive, were a fulcrum for our national values, our self-image and our conception of ourselves as a distinctive people in the world. Like his times, Bush was a mass of questions and contradictions. He founded the Office of Scientific Research and Development (OSRD) and fought savage bureaucratic battles with Army and Navy brass to persuade them to invest in weapons



Vannevar Bush, shown here in 1942, was a high-profile engineer during World
War II

development: Because of Bush, American radar helped sweep U-boats from the sea, and the proximity fuze made anti-aircraft guns and artillery devastatingly effective.

At first Bush opposed nuclear research, thinking the prospects for a bomb "remote from a practical standpoint." He ended up launching the Arnny's Manhattan Project. What to think of a man who advised dropping the bomb on Japan, then wanted to share nuclear secrets with the Soviet Union—and who staunchly opposed the development of the H-bomb?

He sounds almost liberal. Not at all. Bush was so conservative he distrissed democracy. Although he was one of Franklin Delano Roosevelt's greatest admirers and closest achisers, he thought the president should be relieved of his burdens by delegating power to a connuittee of technical experts. During the Communist which

Vannevar Bush set up a laboratory in his home when he was a boy



hums after the war. Bish failed to defend the distinguished scientist E.U. Condon, under attack by the House Un-African Activities Committee, noting that "Commite infiltration constitutes a genuine memore in this company."

A Red baiter, then? Not that easy: He was one of Robert Oppenhemor's staunchest defenders at the 1954 AEU security hearings and a scathing entire of Juseph McCariby, in 1967, Bush recalled, "Good Lord, I worked with Hosver, Truman, Eisenbower, Roosevelt, Kennedy, and I don't think any of them ever knew what my political philosophy was or were in any way interested in it."

Born in 1800 in Chelsea, Mass, the son of a Protestant minister, Bosh began his inventing currer while a student at Tufts College, where he earned a patent on a sort of analog computer mounted on a wheelbarrow, a surveying device. After graduate school at the Massachusetts Institute of Technology, he eventually became a professor there, and by 1932 he was MITs vice-president. Washington, D.C. proved to be but a short step away.

Bush advocated civilian control over military research, but through the OSRD and other organizations he did more than anyone else to establish the military-industrial complex. After the war, his opposition almost stuck the National Science Foundation and the civilian-controlled Atomic Energy Commission (today's Department of Energy) and each had been his own brainchild! Bush was a masterful politician who could threaten and cajole and occasionally deceive to get what he wanted but he had no constituency except scientists and engineers; having lost the support of younger scientists, his power quickly slipped away.

Virtually discarded by government leaders after World War II. Bush kept an office at MIT and thed at home in 1974 at the age of \$4. "In hindsight, how does one judge Vannevar Bush?" Zachary asks. "Right or wrong? Good or bad? Success or failure? Such questions certainly would strike Bush as absurd. . . . His was a life not of looking back, but of charging ahead." Maybe a full reckoning of his importance isn't possible. Bush hinself liked to say, "It is earlier than we think." m

Paul Preuss' new novel is "Secret Possing es."

IEEE Spectrum, Morch 1998

n EE who swayed e world

ANCER MORCAN

sk most electrical engineers to list who did most to shape the econd half of the 20th century, I few are likely to include one of their n: Varinevar Bush, professor of electri-engineering at the Massachusetts In-tute of Technology (MIT), co-founder Raytheon Corp., and civilian director the massive U.S. R&D effort during orld War II. Yet the develop-

ent of radar, the proximity fuse. fective anti-submarine warfare, id countless other innovations ayed the decisive role in tipping e balance of the war to the llies and, in the longer run, in curing democracy as the preninent form of government for idustrialized states at the close of nis century.

Bush was born in 1890 in a own just north of Boston, where is father was a Universalist miniser, and he grew up in a nearby

ommunity to which the family moved in 892. He was a strong-willed young man, with a spark of belligerency, who from the to time endured bouts of illness. He howed great promise in mathematics ind science, and perhaps just as imporant, proved adept at building things with nis hands.

Biographer C. Pascal Zachary, a senior writer for the Wall Street Journal, explains "at in "tinkering in his basement, Bush

ed an activity with many brainy, mid-class boys around the country. The rosance of invention...was contagious... (and) Bush realized that the path of the inventor offered him perhaps the only means of achieving conventional success without sacrificing his maverick leanings."

In 1909, when Bush graduated from Chelsea High, he was an independent-minded, politically conservative middleclass New Englander. He was "impatient with pomp," Zachary reports, an "outsider who resented the clite of society but hungered for recognition too." He went to Tufts University, in Boston, where he camed bachelor's and master's degrees in engineering. On one occasion, he read the textbook for a course in advance and asked the professor if he could cut classes to make some time available for other things, and just take the final exam when it occurred. The professor instead gave him the test on the spot—Bush passed and was granted credit

After working briefly at Ceneral Fler. inc Co., Bush entered a doctoral program at Clark University but then transferred to MIT, where he completed a thesis in the new electrical engineering depart. meni in less than a year. In 1916 he accepted a job at Turts and, in parallel, took a position as laboratory director for American Radio and Research Corp. (Amrad). Three years later he moved to the electrical engineering department at MIT, where he expanded his program of research and industry consulting. Bush's work at Amrad eventually con-

Endless Frontier: Vannevar Bush, Engineer of the American Century. Zgebary, G. Pascal, The Free Press, New York 1997, 518 pp., \$32.50.

addiest falle id dies "Dies durch ist radies G. Postal Zachary

tributed to the establishment of a new company, Raytheon Corp., which grew rapidly, supplying vacuum tubes for the consumer radio market. Bush prospered

In 1932 Karl Compton, MIT's new president, made Bush vice president and dean of engineering. While the position gave him wide administrative responsibilities and greater exposure on the national scene, it did not end his research activities or consulting. Much of his research at MIT focused on analog mechanical com-puting machines (termed "differential calculators") and on "rapid selectors" searching large physical files (such as banks of microfilm).

As the risk of war grew in the late 1930s, Bush became concerned with laying the R&D foundation for a conflict whose outcome, he believed, would be determined by technological prowess. He had already begun to expand his activities in Washington, D.C., when in early 1939 he was named to head the prestigious Carnegie Institution of Washington, a position that provided the springboard that soon vaulted him to the pinnacle of power.

Bush's appointment in 1940 to chair the National Defense Research Committee (NDRC), which was later transformed into the powerful Office of Scien tific Research and Development (OSRD) resulted from vision, good ideas advanced

books

at just the right moment, the right friends, and superh salesmanship combined with technical accomplishment and great administrative skill Bush built an organization that, while coordinating with the uniformed military services, defined its own research priorities and ran its own show with minimal oversight

by the President and Congress.
Bush pioneered new contracting methods that mobilized the nation's top scientists and engineers, with minimal red tape, to address key problems, often in their own laboratories. By 1944 OSRD was spending \$3 million a week on 6000 researchers at more than 300 industrial and university labs. This count does not include the building of the atomic bomb by the Manhattan Project, over which Bush had responsibility through difter-

ent administrative arrangements.

Readers unfamiliar with the critical role played by Bush and the OSRD in the war effort will find the central 150 pages of Zachary's biography an exciting and invaluable introduction. Details of Bush's skilful wooing and bullying of military leaders such as Admiral Ernest J. King are particularly interesting, I would have pre-ferred a few more technical details, but except for confusion between the capabilities of the Cerman V1 and V2 weapons, those provided are accurate.

Accustomed to wielding great power with remarkably little accountability, in the post-war era Bush found it difficult to adjust to the reemergence of politics-as-usual and bureaucratic regulation. He strongly supported the atomic bomb he had helped create; but he also recognized that the bomb had changed the world. and worked hard, if without much success, to put in place an international regime to manage this threat to security.
On the other hand, he was slow to recognize the great strategic importance of ballistic missiles and the military uses of space. This blind spot worked to erode his standing with post-war military leaders.

Bush is widely credited with being the father of the social contract that guided post-war R&D in the United States. He was the principal author of the report. Science the Endless Frontier," which today is perhaps the most venerated. if rarely read, icon in Federal science and technology policy circles. Zachary's account makes it clear that while many of the ideas that led to the post-war system of Federal R&D originated with Bush, and with OSRD contracting experience, Bush by no means deserves all the credit. Indeed, his strong will, plus his failure to understand the changing political landscape, did much to delay the creation of the National Science Foundation.

In Zachary's account, Bush is an immensely impressive man to whom the country and the Western world owe a great debt of gratifiede. He was also human, with an ego, a strong and sometimes abrasive style, and other failings and limitations. These are recounted with an honesty that in no way detracts from Bush's great achievements as an engineer, as an entrepreneur, and as an excellent R&D administrator.

Most of the "big names" in U.S. science and technology policy have started out in science, especially physics. But this fascinating and well-written biography is a reminder that one of the greatest of them all, and perhaps the most influential, was an electrical engineer.

Granger Morgan is the Lord Chair Professor of Engineering at Carnegie Mellon University, Pittsburgh, where he also is head of the department of engineering and public policy and a member of the faculty in electrical and computer engineering.

والتراج بمعادية

Proposals for discussion at Physics Today retreat

The following proposed agenda items are in the spirit of Steve's invitation to put our concerns "on the table." This list was put together by some of the staff, based on discussions among staff members. The theme of these proposals derives from the main points raised by the Physics Today advisory committee: openness, staff empowerment and editorial efficiency. The proposals address issues that are very important to at least some of the staff, and they are intended to provide a basis for discussion. Each proposal is subject to adoption, modification or rejection during the retreat. PLEASE ADD TO THE LIST.

- Agreement that we want to keep all the present staff members.
 - -- Security is a prerequisite for speaking freely, sharing ideas and experimentation.
- 2. Openness.

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real many

- -- Recognize that all staff members are legitimately concerned about all aspects of the magazine -- both content and process.
- -- Proposed changes in magazine's content or process should be announced to the staff and discussed.
- -- Make letters to the editor available to all staff.
- Volunteer reporters -- a staff-based information system.
 - -- Reporter gathers and disseminates information on progress toward agreed-upon goals. Not intended to replace management's information system. (Example: reporting on progress toward hiring someone to categorize books.)
- 4. Problem resolution: Editorial and other.
 - -- Editorial judgment: Burden of proof on critic.
 - -- In disputes, staff members are encouraged to consult others on staff.

- 5. Distribute work according to staff interest.
 - -- Adjust job descriptions of yet-to-be-hired editorial and secretarial staff members based on current staff interests.
- 6. <u>Physics Today</u> management should act in a way that leads staff to see them as their advocates rather than as the local representatives of higher management.
 - -- Advocates in editorial controversies.
 - -- Advocates in annual reviews.
- 7. Voluntary staff participation in hiring.
 - -- Participate in writing job advertisements.
 - -- Examine resumes.
 - -- Talk to candidates.
 - -- Offer recommendations.
- 8. Take affirmative action to increase diversity of <u>Physics</u> <u>Today</u> staff.
- 9. Allow staff to solicit outlines for articles.
- 10. No need for detailed schedules.

(Distribution: All PT staff and managers.)

Marc,

Thank you for asking me to meet with you today about my statement to the Physics Today advisory committee that the magazine has failed to live up fully to its claim that it is an affirmative-action employer.

I am taking this opportunity to outline the history of the issue at the magazine and to discuss the important difference between equal opportunity and affirmative action.

At a November 1996 Physics Today meeting, some of us on the staff raised the issue of affirmative action and the lack of diversity at the magazine. Several weeks earlier, one of the Physics Today editors had submitted his resignation, thus presenting us with an immediate opportunity to work toward correcting the problem. At the meeting, I said I would help monitor the situation in the future, as did Jean Kumagai, who is the only minority among the 18 individuals who work at Physics Today.

On 14 April 1997 the Physics Today staff learned that out of the 85 applicants for the editorial opening at the magazine, three had been selected to come in for interviews -- all white males. Among the 85 applicants were a number of potentially qualified minorities and women. Jean and I argued that if Physics Today were truly committed to affirmative action, it would also bring in some of these applicants. That could have been done easily, but Charles Harris and Steve Benka refused, saying that it was not worth the delay of a week or so that it would cause. We felt that this revealed Physics Today's priorities (and AIP's, too, because Charles had told us that he had discussed the institute's affirmative action policy with Terri Braun after the November 1996 staff meeting), and that affirmative action clearly was low on the list.

The decisive factor turned out to be that while Charles believes in equal opportunity, he does not believe fully in affirmative action. He told me, for example, that he would not hire a minority who is qualified to do the job unless that individual was more qualified than all 84 of the other candidates. Such a policy can lead to an all-white staff even though many minorities are qualified to do the work. For reasons outside of our immediate control, qualified minorities are less likely to have credentials beyond those needed to do the work. Thus, the qualified minorities are passed over in favor of white applicants who have such superfluous credentials. The result is a staff that doesn't look like the population of people who are qualified to do the work. Thus the Physics Today staff does not look like the physics community, the journalism community, the Washington community or the nation as a whole. As long as Physics Today fails to embrace affirmative action, minorities will continue to be in the subset of applicants

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deemed qualified to do the job, but rarely among those actually hired. Thus "equal opportunity" amounts to a de facto "whites only" hiring policy at Physics Today. Historically, affirmative action was instituted to overcome this shortcoming of equal opportunity.

Charles also told me that staff diversity is of no value to the magazine -- except to make the office a more interesting place to work. Therefore the fact that a particular job candidate would contribute to the diversity of the staff counts for nothing, he said.

My own concern about affirmative action at Physics Today was heightened when AIP and the magazine relocated from New York City to College Park four years ago. To fill the editorial openings created by the move, the magazine hired three individuals, all white males -- Ray Ladbury, Denis Cioffi and Steve Benka. None of the three had any journalism experience, but the magazine was willing to train them. (One could view this as an affirmative action program for white males.) If the magazine is willing to hire and train potentially qualified whites, then why not do that for minorities, too?

The managers at Physics Today made two token gestures in response to the pressure that we applied: They told a few organizations of minority scientists about the job opening, and, after they filled the position with a white male, they phoned a few of the minorities whom they had judged to be "promising candidates."

Ever since my disagreement with Charles over affirmative action at Physics Today, he has treated me a little bit like an unwelcome troublemaker. You should be able to verify any point that I have made in this note without attributing it; by doing it that way, you can avoid exacerbating this problem.



38

290



One Physica Ellipse College Park, MD 20740-3843

Tel. 301-209-3100 Fax 301-209-0843

1996 AFFIRMATIVE ACTION PROGRAM

FOR

AMERICAN INSTITUTE OF PHYSICS

Program completed by:

Theresa Braun

Director of Human Resources and

EEO Coordinator

Address:

One Physics Ellipse

College Park, MD 20740-3843

Program approved by:

Marc H. Brodsky

Executive Director/CEO

This Affirmative Action Program is effective from January 1, 1996 to December 31, 1996.

Member Societies:

The American Physical Society
Optical Society of America
Acquistical Society of America

Acoustical Society of America The Society of Rheology

American Association of

Physics Teachers

American Crystallographic Association

American Astronomical Society

American Association of Physicists in Medicine

American Vacuum Society

American Geophysical Union

S 000568

recycled paper



INTER - OFFICE MEMORANDUM

. July 11, 1996

TO:

Theresa C. Braun

FROM:

Melinda Underwood W

SUBJECT:

Affirmative Action--1995

Below are the area in which AIP had underutilization in 1995:

Senior Managers

Female and Minority Underutilization

Senior Professionals

Female Underutilization

Other Professionals

Minority Underutilization

Let me know if you want to develop a narrative discussion of goals for the Affirmative Action Plan for 1996-1997.

The American Institute of Physics--Discussion of Goals (1995)

After analyzing our Affirmative Action plan and looking at the utilization analysis, it has come to the attention of the American Institute of Physics (AIP) that underutilization of minorities and females exist in the following job group:

Senior Managers (101)

Female and Minority

Sr. Professionals (201)

Female

Other Professionals (202)

Minority

The American Institute of Physics has been and will continue to be an equal opportunity employer. Our goals for increasing utilization of the above groups will include:

- Broadening the scope of our recruiting efforts. This will include expanding our recruiting outlets and resources such as utilizing the Internet, Department of Labor, and community resources for job postings.
- Exploring diversity training and continue to monitor hiring process. AIP is looking into offering diversity training for hiring managers and supervisors.
- Examining and identifying internal candidates for open positions and career development.

 This will include continuing cross job training, development of skills, and promotion of existing tuition reimbursement program.

RESPONSIBILITY FOR IMPLEMENTATION

A. Executive Management Responsibility

As the representative of executive management, the EEO Coordinator has primary responsibility and accountability for implementing, directing and monitoring this Affirmative Action Plan.

- 1. Implementing the affirmative action programs set forth in this Plan, including the development of policy statements and related internal and external communication procedures to disseminate those policy statements.
- 2. Developing and supervising the presentation of our equal employment opportunity policy during the supervisory training and new employee orientation programs, which may include questionand-answer sessions for supervisors and employees answering their questions about this Affirmative Action Plan.
- 3. Designing and implementing an audit and reporting system that will accomplish the following:
 - (i) Measure the effectiveness of our affirmative action programs.
 - (ii) Indicate when remedial action is needed.
 - (iii) Determine the degree to which our goals and objectives have been attained.
- 4. Advising management and supervisory personnel on developments in the laws and regulations governing equal employment opportunity.
- 5. Serving as liaison between the Company and all enforcement agencies.
- 6. Identifying problem areas and establishing goals and objectives to remedy underutilization in major job groups, if any underutilization exists.
- 7. Conferring with community organizations representing women, minorities, veterans, the disabled and older workers.

- 8. Auditing periodically our on-the-job training, hiring and promotion patterns to remove impediments to attainment of the Company's goals and objectives.
- 9. Rating supervisory employees based, in part, upon their efforts and success in furthering the goal of equal employment opportunity, and informing supervisory employees of this evaluation practice.
- 10. Discussing periodically the Company's commitment to equal employment opportunity with managers, supervisors, and employees. During these discussions, the EEO Coordinator will stress the importance of affirmative action, as well as nondiscrimination.
- 11. Reviewing the qualifications of all employees to insure that minorities and women are given full opportunities for transfers, promotions and training.
- 12. Providing access to career counseling for all employees.
- 13. Conducting periodic audits to ensure that the Company is in compliance with federal and state laws and regulations requiring:
 - (i) Proper display of posters explaining the Company's obligation to engage in nondiscriminatory employment practices.
 - (ii) Integration of all facilities which we maintain for the use and benefit of our employees.
 - (iii) Maintenance of comparable facilities, including locker rooms and rest rooms, for employees of both sexes.
 - (iv) Providing full opportunity for advancement and encouraging minority and female employees to participate in educational, training, recreational and social activities sponsored by the Company.
- 14. Counseling supervisors and managers to take actions necessary to prevent harassment of employees placed through affirmative action efforts and to eliminate the cause of such complaints. Further, the EEO Coordinator will

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- 15. Establishing an internal complaint system that will enable employees to discuss complaints with the EEO Coordinator whenever they feel that they are being discriminated against on the basis of race, color, religion, sex, national origin, disability or veterans' status.
- 16. Serving as liaison between the Company and community organizations representing minorities, women, veterans, the disabled and older workers.
- 17. Developing expertise and knowledge of equal employment opportunity guidelines and regulations in order to advise and update top management and supervisory personnel concerning developments affecting our equal employment opportunity program.

B. The Responsibilities of Supervisors and Managers

All supervisors and managers must share in the day to day responsibility for implementing the affirmative action programs set forth in this plan. Specifically, they must endeavor to:

- 1. Respond to inquiries about our Affirmative Action and Equal Employment Policy, after consulting with our EEO Coordinator.
- 2. Assist our EEO Coordinator during the investigation of allegations of discrimination.
- 3. Participate in recruitment and accommodation efforts designed to enable disabled individuals, disabled veterans and others to secure employment and to advance to positions for which they are qualified.
- 4. Ensure that all federal and state posters explaining the laws prohibiting discrimination are properly displayed.
- 5. Participate in the development and implementation of affirmative action programs.

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I. <u>Internal Dissemination</u>

The Company will take the following actions to disseminate its Affirmative Action and Equal Employment Policy, as appropriate, on a regular and continuing basis.

- A. Including the Affirmative Action and Equal Employment Opportunity Policy statement in its policy manual and employee handbook, as published. A copy of our EEO Policy, which is contained in our Employee Handbook, is attached at the end of this section.
- B. Meeting with supervisory personnel to explain the intent of the Affirmative Action and Equal Employment Policy and their individual responsibilities for its implementation. We conducted supervisory training for all management about equal employment opportunity, affirmative action and sexual harassment during Plan Year 1995 and have continued the training into Plan Year 1996. We have attached information relating to our supervisory training at the end of this section.
- C. Scheduling special meetings with employees or using Company newsletters to discuss and explain individual employee responsibilities or opportunities under the affirmation action program. During the current plan year we will be conducting

training for all employees about our affirmative action program and equal employment opportunity in the workplace.

- Discussing our equal employment policy during any D. orientation programs we hold, at which time all new employees (and if applicable, transferred and promoted employees) will be advised of our commitment to affirmative action and equal employment opportunity. Our Affirmative Action and Equal Employment Opportunity Policy statement and policy statements affirmatively supporting the employment of minorities, veterans, the disabled and women will be explained during these sessions. During these orientation sessions a management representative from various areas of the Company, including Human Resources, explains the function of their department. Our Affirmative Action and Equal Employment Opportunity Policy statement and policy statements affirmatively supporting the employment of minorities, veterans, the disabled and women are explained during these sessions. We have attached at the end of this section an "Overview of New Employee Orientation Process", which includes a copy of our "New Employee Checklist," and addresses equal employment opportunity and affirmative action in the workplace.
- E. Posting the Affirmative Action and Equal Employment Policy, along with all required State and federal informational posters, on our bulletin boards, and updating such posters as required. Our "Affirmative Action and Equal Employment Opportunity Policy Statement", "Invitation to Vietnam Era and

IDENTIFICATION OF PROBLEM AREAS (DEFICIENCIES) BY ORGANIZATIONAL UNIT AND BY JOB GROUP

I UNDERUTILIZATION

The EEO Coordinator conducted a Utilization Analysis for the 1996 Plan Year in which she compared the workforce representation of minorities and females to their statistical availability by job group. The Utilization Analysis led the Company to identify the following areas of underutilization:

<u>Females</u> are statistically underutilized in job groups 101 (Senior Managers) and 201 (Senior Professionals).

Minorities are statistically underutilized in Job Group 202 (Other Professionals Technicians).

The Company is addressing these potential problem areas by establishing goals which we will attempt to achieve through specific action oriented programs, which are described in the section of this plan entitled "Action Oriented Programs." Our Utilization Analysis and Goals are contained behind the tabs, so named, in this affirmative action plan.

II. ADVERSE IMPACT

To determine if our selection procedures have an adverse impact upon minorities and females during the first six months of our 1996 Plan Year, we conducted an adverse impact analysis upon our selection decisions. We compared the selection ratios of minorities and females to those of non-minorities and males, respectively, in the areas of hiring, promotion and termination. Through this analysis we discovered no areas for this time period of statistically significant adverse impact.

As a result of our adverse impact analysis, we examined each of the selection decisions that occurred in job groups where adverse impact was discovered as described in the Action Oriented Programs section of our plan. Furthermore, a full impact ratio analysis of our selection decisions and a narrative discussion of the legitimate business reasons supporting our decisions is found behind the "Jaar Analysis, Impact Ratio Analysis and Placement Analysis" tab.

III. IN GENERAL

In addition to the above, the EEO Coordinator will, on an annual basis, as applicable, identify potential problem areas in the total employment process, which may include review of the following areas:

A. Composition of the workforce by minority group status and sex.

- B. Composition of applicant flow by minority group status and sex.
- C. Overall employee selection process including position specifications, application forms, interviewing procedures, test administration, test validity, referral procedures, final selection process, and other employee selection procedures.
- D. New hires, promotions, terminations, etc.
- E. Utilization of training, recreation and social events and other programs that are sponsored by the Company.
- F. Technical phases of compliance with laws prohibiting discrimination in employment and promoting affirmative action programs, e.g., retention of applications, notifications to subcontractors, etc.
- G. "Underutilization" of minorities or women in specific job groups.
- H. Lateral or vertical movement of minority or female employees occurring at a lesser rate than that of non-minority or male employees.
- I. The selection process eliminating a significantly higher percentage of minorities or women than non-minorities or men.
- J. Application and other preemployment evaluation forms or procedures not in compliance with federal or state law.
- K. Position descriptions inaccurate in relation to actual functions and duties of that particular job.
- L. <u>De facto</u> segregation, by race or sex, existing in job titles or job groups.
- M. Seniority provisions contributing to overt or inadvertent discrimination by minority group status or sex.
- N. Non-support of our affirmative action and equal employment programs and policies by managers, supervisors or employees.
- O. Minorities or women significantly underrepresented in training or career improvement programs.
- P. Lack of formal techniques for evaluating effectiveness of the programs set forth in this Plan.

From:

Süsan Funk

To:

SBENKA, JBARKER, GCOLLINS, PELLIOT, TFEDER, CHARRI...

Date: Subject: 18 Sep 1997 (Thu) 13:29 Additional Agenda items...

I have been asked to e-mail this to all of you.

-- Susan

Here are some critical topics we would like to see on the agenda for next week's Content Retreat.

(1) Revised editorial structure: implementation of the long-deferred editorial board to increase staff's participation in editorial function and decision making.

While some may regard this as 'process' and not a valid part of this 'content' retreat, this step is essential for any meaningful changes in content to be successfully implemented. PT has a highly talented staff that is frustrated by the current structure, which prevents the staff from making a significant and ongoing contribution to enhancing the magazine's quality. Implementing the editorial board is the best way to make the magazine's content more timely, lively, and interdisciplinary.

All the editorial staff should be part of the editorial board.

- (2) Revised outlook: an outlook that is more independent, more daring, more thought-provoking, more representative of diverse views in the physics community, more appealing to younger readers, more responsive overall not just to our current readers but to the additional readers we would like to have, more competitive.
- (3) Added functions: to provide a forum for debate, to discuss openly issues relevant to the physics community (including controversial or contentious ones), to underscore the social context and relevance of physics.
- (4) Added department: creation of 'reader viewpoint' feature in which PT publishes reader responses to questions formulated by the staff.

How this would work: In one issue we publish the topic on which we want readers to give their opinions. In a later issue, we publish a representative sampling of those opinions. Such a feature would create a lot of reader interest and could play a valuable role in the society of physicists. Our topics and the subsequent opinions could become the talk of physics coffee rooms and pre-colloquium gatherings.

(5) Revised departments: discontinue reporting of awards and job changes.

The undersigned believe that it is essential that these topics be discussed at the content retreat.

Judy Barker, Graham P. Collins, Chas Day, Paul Elliott, Toni Feder, Jean Kumagai, Elliot Plotkin, Jeff Schmidt.

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Dear Graham,

At the Physics Today staff meeting on 3 March, the editor announced your upcoming departure and called it simply "the big news." We found that characterization offensively neutral. The resignation of a dedicated, long-time staff member is not just "news"; it is a huge loss for both the staff and the readers of the magazine, and it is a failure on the part of the magazine. We are extremely sorry you are leaving Physics Today.

The fact that those in charge are not encouraging you to reconsider is consistent with their behavior toward you over the months, and it leads us to believe that they are not 100% unhappy about your resignation. We think they are fully aware and appreciative of your extraordinary dedication and hard work. But we think they nevertheless have mixed feelings about your presence on the Physics Today staff because you have been an outspoken voice for change at the magazine. We share your frustration over management's continued resistance to badly needed improvements, and so we find your decision to resign quite understandable. Nevertheless, we are sorry to lose you.

Of course, driving away people who point out problems will make for a seemingly smoother operation. But such maintenance of appearances comes at a very high price, because problems that are not clearly exposed cannot be adequately addressed or corrected. We have all seen this in the grossly mismanaged effort to prepare the 50th anniversary issue of the magazine. After each of the many meetings that we have had on this special issue -- meetings at which staff suggestions have been routinely ignored and important decisions routinely deferred -- staff members have whispered to each other privately, in the strongest possible terms, about the absurd amount of time and money being wasted. Nearly everyone agrees that the effort is being grossly mismanaged, but because no one has felt safe enough to bring the matter out into the open at a meeting, there has been no real discussion of how the effort could be better organized and executed. And so after all this time the managers have done nothing to improve the way it is being managed.

During the past year, Physics Today management has moved toward a more repressive work environment and toward a love-it-or-leave-it policy. As you know all too well, there is now much less pretense that "improve it" is a realistic option. Management has become suspicious of anything that could lead to change, and they act against it no matter what the cost to morale or to the readers and the physics community. Take, for example, Steve Benka's recent order forbidding private conversations between staff members at work and declaring that all conversations between staff members must be open to management supervision. Although

Charles Harris later told someone on the staff that this totalitarian measure would not be enforced, it has not been officially retracted, and so the chill remains.

Almost four months ago the Physics Today advisory committee warned that "PT could experience severe losses in its editorial staff if morale issues are not being addressed or are being addressed in a cursory manner. This issue needs continued and heightened attention from management." Physics Today management chose to ignore this warning, and now with your departure we are suffering the predicted consequence. (The magazine's loss of Susan Funk, who quietly cleaned out her desk on Friday 6 March and never came back, was also the result of frustration, we think, with the impediments to fashioning her editorial assistant position into something more than a dead-end job.)

Those in charge should not forget that Physics Today is a trust of the physics community. To needlessly lose dedicated and experienced staff members, especially those who make the extra effort to improve the magazine and the workplace, is to squander the physics community's valuable resources.

We hope some way will be found to keep you at Physics Today, although we realize that this is unlikely to happen. We have been fortunate to have you as a colleague, and we gained much from your honesty and insight. We hope you keep up the spirit in whatever you do.

From:

Stephen Benka

To:

Jeff Schmidt 8/19/99 7:09pm

Date: Subject:

First thoughts on your response to the review

Jeff.

Because you didn't have time to discuss your response to your review when you gave it to me, here are my initial thoughts on the inaccuracies that you perceive. Let's discuss this further as soon as possible.

Your example #1: You neglected to mention that, initially, you had wanted to count Goldstein as one long article, not two. However, because you had completed Goldstein within the previous review cycle, and because you were two full articles short of your already reduced (because of your cancelled patemity leave) production goal for last year, we counted them as two and included them in that cycle. This ensured that you would receive an "acceptable" rating, which was clearly in your best interest.

Each editor who worked on decadal excerpts for the anniversary issue did the equivalent of one full article's work in his or her decade. There would be no reason to count yours otherwise, except that your work on your decade had to be largely redone by someone else.

As of today, to my knowledge, the Will article is not yet completed. If it were, I would count it as an article completed within this review period.

Your example #2: You are right that I should have discussed the change of weights with you. I apologize for not having done so. Let's discuss and agree on your job description as soon as possible.

Your example #3: My description is accurate.

Your example #4: Your appeal to Charles Hamis, Theresa Braun, and James Stith was the proper procedure to follow. However, as we discussed earlier today (and at other times), your surreptitious circulation of your response to the staff was entirely inappropriate.

I still would like you to tell me which member or members of the staff you have discussed this year's review with.

-Steve

Juno e-mail printed Fri, 20 Aug 1999 14:14:46, page 1

From: Jeff Schmidt <jeff-schmidt@juno.com> Received: (from jeff-schmidt@juno.com)

by m4. jersey. juno.com (queuemail) id EJGYUQBF; Fri, 20 Aug 1999 14:04:47 EDT

Return-path: jeff-schmidt@juno.com

To: lugenbold@juno.com, tfeder@wam.umd.edu, jak@interport.net

Cc: jeff-schmidt@juno.com

Date: Fri, 20 Aug 1999 14:04:47 EDT

Subject: Naming names

Message-ID: <19990820.140725.15951.0.jeff-schmidt@juno.com>

X-Status: Read X-Mailer: Juno 1.49

Hi Paul, Toni and Jean,

I just sent the message below to Warren. I don't know if he will get it before Tuesday, when he is next in the office. As you will see, it applies to you, too, but I thought it would be best to keep the message to Warren separate. (Please be careful not to mention his name in the context of this stuff.) Any suggestions or offers?

Jeff		

Hi Warren,

My discussion with Steve Benka about my performance review took place yesterday afternoon (Thursday 19 August 1999). It went more or less as expected (he basically didn't budge), except for one thing: He indicated that what he said about me in the review was confidential. At first I took that to mean that the review was confidential like a doctor's report, which goes only to the patient, to protect the patient's privacy. But it quickly became clear that what he meant was that he didn't want me to tell anyone what he said about me in the review — for his protection, not mine.

I responded by saying that most of the staff doesn't understand "confidential" to mean that they are forbidden to talk about their reviews (it is often necessary to talk about a review to check its accuracy), and I pointed out that they commonly discuss such things with their coworkers. Besides, I said, in this case it's too late, because I have already discussed it with a coworker (more than one, actually), and I didn't ask that person not to discuss it with others. So lots of people could know about it by now (I'm sure they do).

Benka appeared to be genuinely surprised and disturbed that people talk to each other about these things. I told him that I was surprised that he was surprised. I said that lots of people here talk to each other about everything, and that's a good thing — it's a sign of closeness. He was also disturbed that I had discussed the review with a coworker, and he asked me to tell him who it was. (I won't do that, of course.) I said that I didn't want to get anyone in trouble. He indicated that he still wanted to know. So I offered to ask the person if it would be ok to mention his or her name. At the end of the meeting, Benka said again that he wanted to know who it is. And a few hours later, at the end of a not-very-interesting e-mail message to me about other aspects of the review, he wrote this:

S 001385

Juno e-mail printed Fri, 20 Aug 1999 14:14:46, page 2

>1 still would like you to tell me which >member or members of the staff you have >discussed this year's review with.

>--Steve

So I am now contacting all the people whom I think know about my review, to get their ideas on what I should tell Benka.

Jeff

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Internet just the way you want it. Free software, free e-mail, and free Internet access for a month! Try Juno Web: http://dl.www.juno.com/dynoget/tagj.

Juno e-mail printed Sat, 21 Aug 1999 01:29:13, page 1

From: Toni Feder <tfeder@wam.umd.edu>

Received: from mx2.jersey.juno.com (mx2.jersey.juno.com [209.67.34.54]) by m4.jersey.juno.com with SMTP id AAA555HGZAWJHMDS for <jeff-schmidt@juno.com> (sender <tfeder@wam.umd.edu>); Fri, 20 Aug 1999 14:22:15 -0400 (EST)

Received: from mx5.boston.juno.com (mx5.boston.juno.com [205.231.100.53]) by mx2.jersey.juno.com with SMTP id AAA555HGZATTN59J for <jeff-schmidt@juno.com> (sender <tfeder@wam.umd.edu>); Fri, 20 Aug 1999 14:22:15 -0400 (EST)

Received: from wilson.acpub.duke.edu (wilson.acpub.duke.edu [152.3.233.69])
by mx5.boston.juno.com with SMTP id AAA555HGZAKSV2Y2
(sender <tfeder@wam.umd.edu>);
Fri, 20 Aug 1999 14:22:15 -0400 (EST)

Received: from wam.umd.edu (async249-51.async.duke.edu [152.3.249.51])
by wilson.acpub.duke.edu (8.8.5/Duke-4.6.0) with ESMTP id OAA02801;
Fri, 20 Aug 1999 14:22:11 -0400 (EDT)

Return-path: <tfeder@wam.umd.edu> Reply-To: tfeder@wam.umd.edu

To: Jeff Schmidt < jeff-schmidt@juno.com > Cc: lugenbold@juno.com, jak@interport.net Date: Fri, 20 Aug 1999 14:25:15 -0400

Subject: Re: Naming names

Message-ID: <37BD9D7F.A57F16F9@wam.umd.edu>

References: <19990820.140725.15951.0.jeff-schmidt@juno.com>

X-Status: Read

X-Mailer: Mozilla 4.04 (Macintosh; I; PPC)

Hi Jeff, Jean, Paul,

obviously I don't think you should tell Steve whom you discussed your review with. Since he is so harsh with you, it would only impugn those people by association -- why does he want that info? It seems he would use (or at least hold) it against us: So I absolutely don't want him to know I am among those people. Also, don't forget, Chas is among those people.

I don't know what you should tell him-- just that the person/people involved felt that it would be used against them? Or more simply, they felt uncomfortable with that request? something like that.

Maybe you could say something like, "The conversations I had with (some of) my coworkers were private, and they feel it would be an invasion of their privacy for me to reveal their names just because they talked with me. I'm sorry I can't reveal anyone's name."

You could add something reassuring, if you can think of anything. Something to let him know you are not planning or inciting a rebellion among the staff....

Toni

From: "Jean A. Kumagai" < jak@interport.net>

Received: from mx2.jersey.juno.com (mx2.jersey.juno.com [209.67.34.54])

by m4.jersey.juno.com with SMTP id AAA555KHSAZ77UWS

for <jeff-schmidt@juno.com> (sender <jak@interport.net>);

Fri, 20 Aug 1999 14:56:48 -0400 (EST)

Received: from mx5.boston.juno.com (mx5.boston.juno.com [205.231.100.53])

by mx2.jersey.juno.com with SMTP id AAA555KHSAXKWHG2

for <jeff-schmidt@juno.com> (sender <jak@interport.net>);

Fri, 20 Aug 1999 14:56:48 -0400 (EST)

Received: from amsterdam.interport.net (amsterdam.interport.net [199.184.165.19])

by mx5.boston.juno.com with SMTP id AAA555KHSAPY897A

(sender < jak@interport.net>);

Fri, 20 Aug 1999 14:56:48 -0400 (EST)

Received: from [209.122.227.240] (209-122-225-172.s172.tnt1.nyw.ny.dialup.rcn.com

[209.122.225.172])

by amsterdam.interport.net (8.8.5/8.8.5) with ESMTP id OAA01347;

Fri, 20 Aug 1999 14:56:57 -0400 (EDT)

Return-path: <jak@interport.net>

In-Reply-To: <37BD9D7F.A57F16F9@wam.umd.edu>

To: tfeder@wam.umd.edu, Jeff Schmidt < jeff-schmidt@juno.com>

Cc: lugenbold@juno.com, jak@interport.net

Date: Fri, 20 Aug 1999 14:58:36 -0500

Subject: Re: Naming names

Message-ID: <v03110711b3e35d5dc946@[209.122.227.240]> References: <19990820.140725.15951.0.jeff-schmidt@juno.com>

X-Status: Read

Hi Jeff (and Toni and Paul),

I don't know what would be the best way to respond to Benka. I personally don't mind if you tell him you talked to me. On the other hand, if you think it would be stronger to say that nobody wanted their name revealed for fear of retribution, then I definitely do not want you to mention my name.

You can also tell Benka that I agree with everything in both of your responses to your performance reviews, that I'm appalled by his deviousness, that I consider you to be an extremely supportive and valuable colleague, and that the long-standing morale problem at PT (which obviously did not originate with your distributing your appeal to the staff) will only get worse if he doesn't improve his attitude. You might also add that management's increasingly repressive policies may soon lead to the voluntary departure of one of its best editors.:)

Should I tell anybody else on the staff about your review? It will have to

wait until after I get back from Maine.

Jean

```
At 2:25 PM -0400 8/20/99, Toni Feder wrote:
>Hi Jeff, Jean, Paul,
>obviously I don't think you should tell Steve whom you discussed your review
>with. Since he is so harsh with you, it would only impugn those people by
>association -- why does he want that info? It seems he would use (or at least
>hold) it against us. So I absolutely don't want him to know I am among those
>people. Also, don't forget, Chas is among those people.
>I don't know what you should tell him-- just that the person/people involved
>felt that it would be used against them? Or more simply, they felt
>uncomfortable with that request? something like that.
>
>Maybe you could say something like, "The conversations I had with (some of) my
>coworkers were private, and they feel it would be an invasion of their privacy
>for me to reveal their names just because they talked with me. I'm sorry I
>can't reveal anyone's name."
>You could add something reassuring, if you can think of anything. Something to
>let him know you are not planning or inciting a rebellion among the staff....
>
>Toni
```

From:

Warren Kornberg

To:

Jeff Schmidt

Date:

8/20/99 8:11pm

Subject:

Re: Naming names

Jeff:

1--e-mail is not confidential, and if you want to be sure, it should not be used for things (like naming names) you do not want discussed.

2--I don't think there is any reason you should be required to disclose conversations you might or might not have had with other people in the building. With whom you discuss your business is your business. If you want to tell him you talked to me, that, too, is your business; I don't really care. But as you spell it out, the demand seems high-handed.

3-As far as the review's confidentiality is concerned, I believe that it is, but as a restriction on the management, not on you.

W

>>> Jeff Schmidt 08/20/99 01:42PM >>> Hi Warren,

My discussion with Steve Benka about my performance review took place yesterday afternoon (Thursday 19 August 1999). It went more or less as expected (he basically didn't budge), except for one thing: He indicated that what he said about me in the review was confidential. At first I took that to mean that the review was confidential like a doctor's report, which goes only to the patient, to protect the patient's privacy. But it quickly became clear that what he meant was that he didn't want me to tell anyone what he said about me in the review—for his protection, not mine.

I responded by saying that most of the staff doesn't understand confidential to mean that they are forbidden to talk about their reviews (it is often necessary to talk about a review to check its accuracy), and I pointed out that they commonly discuss such things with their coworkers. Besides, I said, in this case it's too late, because I have already discussed it with a coworker (more than one, actually), and I didn't ask that person not to discuss it with others. So lots of people could know about it by now (I'm sure they do).

Benka appeared to be genuinely surprised and disturbed that people talk to each other about these things. I told him that I was surprised that he was surprised. I said that lots of people here talk to each other about everything, and that's a good thing— it's a sign of closeness. He was also disturbed that I had discussed the review with a coworker, and he asked me to tell him who it was. (I won't do that, of course.) I said that I didn't want to get anyone in trouble. He indicated that he still wanted to know. So I offered to ask the person if it would be ok to mention his or her name. At the end of the meeting, Benka said again that he wanted to know who it is. And a few hours later, at the end of a not-very-interesting e-mail message to me about other aspects of the review, he wrote this:

>1 still would like you to tell me which >member or members of the staff you have >discussed this year's review with. So I am now contacting all the people whom I think know about my review, to get their ideas on what I should tell Benka.

Jeff

PS -- Careful with those computer buttons! I just noticed that your brief e-mail message to me yesterday morning also went out to Jeff Bebee, Georgina Guagenti and advtsg. No harm done.

Juno e-mail printed Mon, 23 Aug 1999 01:34:13, page 1

From: Paul J Elliott < lügenbold@juno.com>

Received: from mx1.jersey.juno.com (mx1.jersey.juno.com [209.67.33.54])

by m4.jersey.juno.com with SMTP id AAA56BC8WANXWDKA for <jeff-schmidt@juno.com> (sender <lugenbold@juno.com>);

Sun, 22 Aug 1999 19:46:28 -0400 (EST)

Received: from m6.boston.juno.com (m6.boston.juno.com [205.231.101.197]) by mx1.jersey.juno.com with SMTP id AAA56BC8WAJ6CKW2 for <jeff-schmidt@juno.com> (sender <lugenbold@juno.com>);

Sun, 22 Aug 1999 19:46:28 -0400 (EST)

Received: (from lugenbold@juno.com)

by m6.boston.juno.com (queuemail) id EJNQ7AHQ; Sun, 22 Aug 1999 19:46:11 EDT

Return-path: <lugenbold@juno.com>

To: jeff-schmidt@juno.com

Cc: tfeder@wam.umd.edu, jak@interport.net Date: Sun, 22 Aug 1999 19:46:11 EDT

Subject: Re: Naming names

Message-ID: <19990822.202344.4631.0.Lugenbold@juno.com> References: <19990821.120842.14367.0.jeff-schmidt@juno.com>

X-Status: Read X-Mailer: Juno 1.49

Jeef (Jean, Toni too):

I think Warren is correct, but I further recommend that you tell Benka nothing other than that, having discussed the matter further with people you trust and respect, you have decided to tell him nothing more about any performance-review-related discussions you have had with AIP employees, non-AIP journalists, or outside lawyers.

And tell him so in writing, on the chance that you can develop a Benka-incriminating paper/electron trail.

To that end, I also recommend that you consider preceding that memo with one of inquiry, asking him to tell you why he wants you to name names, and what he intends to do once he knows those names.

However, If you have no stomach for ensnaring him, then I suggest you simply request that he cease harassing you with threats, demands, gag orders, trumped-up allegations, and ad hoc declarations of confidentiality. You could also be kind and offer to send him some easy-to-understand information on such topics as freedom of speech and the right of assembly.

Paul

On Sat, 21 Aug 1999 12:06:03 EDT Jeff Schmidt <jeff-schmidt@juno.com> writes:

>Hi Toni, Paul and Jean,

>Here's some stuff from and to Warren, relevant to all. Paul, do you

>want to comment on Benka's request that I name names?

>Jeff

-Je11

>-----

Jı	no e-mail printed Mon, 23 Aug 1999 01:34:13, page 2
>	Jeff:
> co	real. I don't think there is any reason you should be required to disclose onversations you might or might not have had with other people in the building. With whom you discuss your business is your business. If you want to tell him you talked to me, that, too, is your business; I don't really care. But as you spell it out, the demand seems high-handed.
	-As far as the review's confidentiality is concerned, I believe that it is, but a restriction on the management, not on you.
>	·v
>.	
	di Warren,
> th >	Thank you for basing your response to Benka's demand on principle, rather an on fear.
> to pe	I am still thinking about what to tell him, but I am leaning very strongly ward not giving him any names, even though you and some others have given me rmission to do so. I don't want to give the appearance of finding a falitarian request acceptable.
> (y m	One thing I am thinking about doing is simply quoting people's responses ours and about three others), leaving out their names and anything else that ght identify them, and also leaving out the sentences where they give me rmission to mention their names.
> no hin rev as res son >a	If Benka wants to know more, he can ask individual staff members whether or it I discussed my review with them. One useful response might be to simply tell in the truth that I said that I was trying to determine whether or not the view was accurate, and so we went over the review and compared it to the facts we remembered them. And, of course, let him know the outcome. Another ponse might be to refuse to report on private conversations but to say that meone did show you the review and that you are willing to discuss its occuracy. Whatever; I'm not worried; Benka doesn't present much of an itsellegated as all the said of
> ''	itellectual challenge in these or other matters.
>J(eff
> >	
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>	
>_	
>ar	et the Internet just the way you want it. Free software, free e-mail, Id free Internet access for a month! Try Juno Web:
>ht	tp://dl.www.juno.com/dynoget/tagj.

Juno e-mail printed Mon, 6 Nov 2000 16:01:37, page 1

From: Jeff Schmidt < jeff-schmidt@juno.com> Received: (from jeff-schmidt@juno.com)

by m4.jersey.juno.com (queuemail) id EJPQWQT4; Mon, 23 Aug 1999 05:00:46 EDT

Return-path: jeff-schmidt@juno.com

To: jak@interport.net, lugenbold@juno.com, tfeder@wam.umd.edu

Cc: jeff-schmidt@juno.com

Date: Mon, 23 Aug 1999 05:00:46 EDT

Subject: Naming names

Message-ID: <19990823.050304.14375.0.jeff-schmidt@juno.com>

X-Status: Read X-Mailer: Juno 1.49

Dear four colleagues who saw my annual review and who Benka wants me to name,

Taking everyone's suggestions into account, my current thinking is to not give Benka any names and to not give him anything in writing. I would give him a verbal report that would include the four responses (below) to his demand. Even though I have removed your name, I won't include your response in my oral report without your approval. So please find it below and let me know if it is ok; modify it if necessary.

As one of you suggested (and as I had decided, too), I would first ask Benka why he wants the names. To him, I think, the problem isn't the out-to-get-you review; it's the fact that I disclosed it and criticized it. If he comes around asking, "Did Jeff talk to you about his performance review?", feel free to say "yes" or "I don't feel comfortable reporting on private conversations" or "I don't feel comfortable reporting on private conversations, but I am familiar with the review and can talk about that." I'd probably be better off if you didn't say who showed you the review, and if you didn't say that you saw any written response to it.

My spoken report to Benka would be something like this:

Mittagar (1990) 15 (1991) 14 (1994) 15

Following up on your request, I was able to track down four colleagues who saw my annual review either because I showed it to them or because someone else did. They all reacted negatively to your request for their names, so I'm afraid I don't have any names to report. The most I can do is tell you what they told me when I asked for permission to identify them. Would that be of any use to you? [At this point Benka says yes and I read the following responses.]

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the state of

^{1.} Obviously I don't think you should tell Steve whom you discussed your review with. Since he is so harsh with you, it would only impugn those people by association — why does he want that info? It seems he would use (or at least hold) it against us. So I absolutely don't want him to know I am among those people.

I don't know what you should tell him -- just that the person/people involved felt that it would be used against them? Or more simply, they felt uncomfortable with that request?

Juno e-mail printed Mon, 6 Nov 2000 16:01:37, page 2

for me to reveal their names just because they talked with me. I'm sorry I can't reveal anyone's name."

You could add something reassuring, if you can think of anything. Something to let him know you are not planning or inciting a rebellion among the staff....

2. I don't know what would be the best way to respond to Benka. There is fear of retribution.

You can tell him that I'm appalled by his deviousness, that I consider you to be an extremely supportive and valuable colleague, and that the long-standing morale problem at PT (which obviously did not originate with your appeal becoming known last year) will only get worse if he doesn't improve his attitude. Management's increasingly repressive policies will inevitably have negative consequences.

3. I recommend that you tell Benka nothing other than that, having discussed the matter with people you trust and respect, you have decided to tell him nothing more about any performance-review-related discussions you have had.

I suggest you simply request that he cease harassing you with threats, demands, gag orders, trumped-up allegations, and ad hoc declarations of confidentiality. You could also be kind and offer to send him some easy-to-understand information on such topics as freedom of speech and the right of assembly.

4. I don't think there is any reason you should be required to disclose conversations you might or might not have had with other people in the building. With whom you discuss your business is your business....the demand seems high-handed.

As far as the review's confidentiality is concerned, I believe that it is, but as a restriction on the management, not on you.

Jeff

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Juno e-mail printed Mon, 6 Nov 2000 16:08:39, page 1

From: Toni Feder < tfeder@wam.umd.edu>

Received: from mx2.jersey.juno.com (mx2.jersey.juno.com [209.67.34.54])
by m4.jersey.juno.com with SMTP id AAA56D8F5AHQ398J
for <jeff-schmidt@juno.com> (sender <tfeder@wam.umd.edu>);

Mon, 23 Aug 1999 21:43:23 -0400 (EST)

Received: from mx2.boston.juno.com (mx2.boston.juno.com [205.231.100.52]) by mx2.jersey.juno.com with SMTP id AAA56D8F5AEVZ78J for <jeff-schmidt@juno.com> (sender <tfeder@wam.umd.edu>);

Mon, 23 Aug 1999 21:43:23 -0400 (EST)

Received: from wilson.acpub.duke.edu (wilson.acpub.duke.edu [152.3.233.69]) by mx2.boston.juno.com with SMTP id AAA56D8F4A5JXAU2 (sender <tfeder@wam.umd.edu>);
Mon, 23 Aug 1999 21:43:22 -0400 (EST)

Received: from wam.umd.edu (async249-13.async.duke.edu [152.3.249.13]) by wilson.acpub.duke.edu (8.8.5/Duke-4.6.0) with ESMTP id VAA01658; Mon, 23 Aug 1999 21:43:16 -0400 (EDT)

Return-path: <tfeder@wam.umd.edu> Reply-To: tfeder@wam.umd.edu

To: Jeff Schmidt <jeff-schmidt@juno.com> Cc: jak@interport.net, lugenbold@juno.com Date: Mon, 23 Aug 1999 21:47:11 -0400

Subject: Re: Naming names

Message-ID: <37C1F95A.E7D97018@wam.umd.edu>

References: <19990823.050304.14375.0.jeff-schmidt@juno.com>

X-Status: Replied

X-Mailer: Mozilla 4.04 (Macintosh; I; PPC)

****** Please do not quote from the new content of this note. Some are embedded in your text. *******
Hi Jeff,

I would feel more comfortable - and think it would be a better strategy - if you would summarize what your colleagues' reactions were to the request that you identify them, rather than read (as you say you would do after he says "yes" he'd like to know their reasons), or even repeat to him modified-verbatim what we each said. Reading identity-edited-out comments is theatrical. I think his request should be played down, not up, and nipped in the bud. I would prefer that (if anything at all) you say each idea once, in your own words, rather than in ours. For example, there is considerable overlap, in particular in the comments by me, Warren and Paul, so I suggest summing these up. Giving him three versions is an invitation for him to continue playing this stupid game of trying to identify your colleagues. In my view, the point to make is simple: it's none of his business. Jean made some different comments, and those may be worth including in whatever you say. (It would be fine with me if you noted that more than one colleague commented that they think of you as a very valuable colleague, and value your contributions to the magazine.) But I prefer the simpler, less theatrical tack of paraphrasing and summing up, rather than "handing him our words."

In that vein, my preference would be that you still ask him (if you want to) why he wants to identify the colleagues who know about your review, and then say (something like) they (and I) all feel that it's not appropriate to have to report on private conversations. One person noted that confidentiality is a restriction on management, not on employees.

Juno e-mail printed Mon, 6 Nov 2000 16:08:39, page 2

end of investigation, let's hope.

-- Toni

Subject: Naming names Date: Mon, 23 Aug 1999 05:00:46 EDT From: Jeff Schmidt <jeff-schmidt@juno.com> To: jak@interport.net, lugenbold@juno.com, tfeder@wam.umd.edu CC: jeff-schmidt@juno.com

Dear four colleagues who saw my annual review and who Benka wants me to name,

Taking everyone's suggestions into account, my current thinking is to not give Benka any names and to not give him anything in writing. I would give him a verbal report that would include the four responses (below) to his demand. Even though I have removed your name, I won't include your response in my oral report without your approval. So please find it below and let me know if it is ok; modify it if necessary.

As one of you suggested (and as I had decided, too), I would first ask Benka why he wants the names. To him, I think, the problem isn't the out-to-get-you review; it's the fact that I disclosed it and criticized it. [JEFF: SO WHAT DO YOU THINK HIS MOTIVE IS, IF NOT TO SOMEHOW HOLD IT AGAINST YOUR COLLEAGUE-CONFIDANTS?] If he comes around asking, "Did Jeff talk to you about his performance review?", feel free to say "yes" or "I don't feel comfortable reporting on private conversations" or "I don't feel comfortable reporting on private conversations, but I am familiar with the review and can talk about that." I'd probably be better off if you didn't say who showed you the review, and if you didn't say that you saw any written response to it. [IF HE ASKS ME, I PLAN TO SAY I THINK IT'S NONE OF HIS BUSINESS. BUT I DON'T SEE ANYWAY OF HOLDING THAT PARTICULAR DISCUSSION, AND I HOPE HE DOESN'T ASK]

My spoken report to Benka would be something like this:

Following up on your request, I was able to track down four colleagues who saw my annual review either because I showed it to them or because someone else did. They all reacted negatively to your request for their names, so I'm afraid I don't have any names to report. The most I can do is tell you what they told me when I asked for permission to identify them. Would that be of any use to you? [At this point Benka says yes and I read the following responses.]

[AS I WROTE ABOVE, I PREFER YOU PARAPHRASE, RATHER THAN READ MY RESPONSE]

1. Obviously I don't think you should tell Steve whom you discussed your review with. Since he is so harsh with you, it would only impugn those people by association — why does he want that info? It seems he would use (or at least hold) it against us. So I absolutely don't want him to know I am among those people.

I don't know what you should tell him -- just that the person/people involved felt that it would be used against them? Or more simply, they felt uncomfortable with that request?

Maybe you could say something like, "The conversations I had with (some of) my coworkers were private, and they feel it would be an invasion of their privacy

Juno e-mail printed Mon, 6 Nov 2000 16:08:39, page 3

for me to reveal their names just because they talked with me. I'm sorry I can't reveal anyone's name."

You could add something reassuring, if you can think of anything. Something to let him know you are not planning or inciting a rebellion among the staff....

2. I don't know what would be the best way to respond to Benka. There is fear of retribution.

You can tell him that I'm appalled by his deviousness, that I consider you to be an extremely supportive and valuable colleague, and that the long-standing morale problem at PT (which obviously did not originate with your appeal becoming known last year) will only get worse if he doesn't improve his attitude. Management's increasingly repressive policies will inevitably have negative consequences.

3. I recommend that you tell Benka nothing other than that, having discussed the matter with people you trust and respect, you have decided to tell him nothing more about any performance-review-related discussions you have had.

I suggest you simply request that he cease harassing you with threats, demands, gag orders, trumped-up allegations, and ad hoc declarations of confidentiality. You could also be kind and offer to send him some easy-to-understand information on such topics as freedom of speech and the right of assembly.

4. I don't think there is any reason you should be required to disclose conversations you might or might not have had with other people in the building. With whom you discuss your business is your business....the demand seems high-handed.

[I DO THINK IT'S A GOOD IDEA TO MENTION THE FOLLOWING COMMENT BY WARREN] As far as the review's confidentiality is concerned, I believe that it is, but as a restriction on the management, not on you.

Jeff

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Juno e-mail printed Mon, 6 Nov 2000 16:13:12, page 1

From: Toni Feder < tfeder@wam.umd.edu>

Received: from mx2.jersey.juno.com (mx2.jersey.juno.com [209.67.34.54])

by m4.jersey.juno.com with SMTP id AAA56EBYDAWVD5QS for <jeff-schmidt@juno.com> (sender <tfeder@warn.umd.edu>);

Mon, 23 Aug 1999 22:43:15 -0400 (EST)

Received: from mx5.boston.juno.com (mx5.boston.juno.com [205.231.100.53])

by mx2.Jersey.juno.com with SMTP id AAA56EBYDAUBEXCJ for <jeff-schmidt@juno.com> (sender <tfeder@wam.umd.edu>);

Mon, 23 Aug 1999 22:43:15 -0400 (EST)

Received: from wilson.acpub.duke.edu (wilson.acpub.duke.edu [152.3.233.69])

by mx5.boston.juno.com with SMTP id AAA56EBYDAMGG9P2

(sender <tfeder@wam.umd.edu>);

Mon, 23 Aug 1999 22:43:15 -0400 (EST)

Received: from wam.umd.edu (async249-8.async.duke.edu [152.3.249.8])

by wilson.acpub.duke.edu (8.8.5/Duke-4.6.0) with ESMTP id WAA02639;

Mon, 23 Aug 1999 22:43:11 -0400 (EDT)

Return-path: <tfeder@wam.umd.edu> Reply-To: tfeder@wam.umd.edu

To: Jeff Schmidt < jeff-schmidt@juno.com> Cc: lugenbold@juno.com, jak@interport.net Date: Mon, 23 Aug 1999 22:47:12 -0400

Subject: Re: Naming names

Message-ID: <37C20767.2DBF0F6A@wam.umd.edu>

References: <19990823.050304.14375.0.jeff-schmidt@juno.com>

X-Status: Read

X-Mailer: Mozilla 4.04 (Macintosh; I; PPC)

hi again, jeff,

this is an addendum to my previous e-mail. i'm glad you will summarize rather than read our comments. the reason for writing now is just to offer supportbecause from your note i realize that you worry he would try to collect data about you from us (i.e. use our names against your, unsuccessfully, i'd bet), whereas i'm thinking he'd use the information to penalize us. irony. well, let's not let him use any of it against any of us.

toni

30 August 1999

Steve --

Here are the notes that you requested. They outline the responses that I got when I asked colleagues who saw my annual review for permission to fulfill your request that I report their names to you. As you know, I did not want to give you this written report, but you insisted that I do so. I can only hope that you will use it to address staff concerns and not "kill the messenger."

Four themes were apparent in the responses from my coworkers.

- 1. They consider me to be a supportive and valuable colleague, and they want you to behave in accord with that view. They note that the long-standing staff morale problems did not originate with my review appeal.
- 2. Their anxiety was exacerbated by the fact that you were not open about your reasons for wanting their names. (Later, when I asked you specifically why you wanted their names, you refused to answer.) Thus the only thing they imagined coming from your investigation was punishment, of me or of them. They think they would be subject to guilt by association, because you have been so harsh with me.
- 3. They feel that their conversations were private and that to reveal them would be an invasion of their privacy. They made reference to the First Amendment, the spirit of which they evidently carry with them.
- 4. They agree with you that annual reviews are confidential, but they see that as a restriction on management, not on them. Thus they feel free to discuss their reviews, and many do. They think it would set a bad precedent if any of us were punished for that.

Please let me know if I can be of further assistance.

Jeff

Subj: Fwd: American Institute of Physics case Date: 7/15/2002 3:11:17 PM Eastern Daylight Time

From: w.sweet@ieee.org (William Sweet)

To: jschmidt222@aol.com

Dear Jeff,

I'd say the Commission both misrepresented and underrepresented. I said nothing about my job not being 9-5; all I said was that once one completed one's well-defined responsibilities, one was free to do work of one's own on office time. And I certainly took the commitments made to me by Davis and Braun as general policy, not concessions made to me personally.

Hope that helps,

Bill

Date: Thu, 9 May 2002 12:20:22 -0400

To: avhawkins@co.pg.md.us

From: William Sweet <w.sweet@ieee.org> Subject: American Institute of Physics case

Dear Mr. Hawkins,

Thank you for calling Tuesday and giving me the opportunity to help with your investigation, which I consider to be very important. I am writing to follow up with some more detail, which I hope you will find useful.

I have been a journalist (writer and editor) for 25 years. My first jobs were with a financial newsletter in Manhattan and then with Congressional Quarterly in Washington, D.C. At Physics Today, I was an associate editor, like Schmidt, from 1984 to 1993. I am currently Senior News Editor at IEEE Spectrum magazine, in New York.

Upon being hired at Physics Today, I asked the Editor in Chief, Harold Davis, whether I could pursue freelance writing projects during my employment. He said that would be fine as long as I did not imply that what I wrote was endorsed by Physics Today or the American Institute of Physics. I also confirmed with Human Resources that I would have unlimited long-distance telephone privileges. At the time, Theresa Braun was the director of Human Resources.

Physics Today had an exact way of defining peoples' jobs. If you did your job, then you were left alone. Writers were expected to write four pages per month, or one page per week. In theory, if I wrote four pages in one week, I could then do whatever I wanted for the remainder of the month.

While at Physics Today, I worked on a number of different freelance projects while at work, including regular articles for The Bulletin of the Atomic Scientists, which many of my colleagues saw. I worked on these projects openly, often discussing them with coworkers and using my office computer and the magazine's library for research.

One of my freelance projects was a controversial article that was published in MIT's Technology Review, in which I suggested that the Chernobyl nuclear power plant accident involved a nuclear explosion. When it was published, a number of articles were written in response, and I received a fair amount of publicity. Soon after, AIP's clipping service collected many newspaper articles commenting on my Chernobyl piece. I know this because a senior editor at Physics Today, Barbara Levi, called me into her office, handed me the large stack of clippings, and said, "This is what happens when you use the term nuclear explosion." Many of the articles in the stack identified me as an editor at Physics Today. One of the articles, distributed by the Associated Press for publication in newspapers across the country, reported that I gave an interview on the subject from my office at Physics Today. (The 9 June 1989 article identified me as "William Sweet, a reporter for Physics Today, published by the American Institute of Physics." It went on to say, "In an interview Friday from his New York office, Sweet explained that a Chernobyl-type accident is unlikely in the United States...") I was never warned, reprimanded or disciplined in any way, and I was never told to refrain from writing controversial pieces. I continued my freelance work throughout my years at Physics Today.

In my experience, using office time for freelancing (and using an employer's resources) is ubiquitous in journalism. Book writing by journalists is common, and would be impossible to do completely outside of business hours. Employers benefit by maintaining a writer-friendly environment. For example, freelance work can increase a staff writer's stature and lead to valuable spin-off projects for the employer. Indeed, my Chernobyl article led to a tip that resulted in my writing a major investigative piece on a closely related subject, which Physics Today published.

I hope this information is useful in your investigation. Please let me know if I can be of further assistance.

Sincerely,

Subj: Physics Today dismissal

Date: 5/15/2002 7:57:17 PM Eastern Daylight Time

From: cmohr@tndc.org (Chris Mohr)

To: avhawkins@co.pg.md.us ('avhawkins@co.pg.md.us')

Dear Mr. Hawkins,

I was happy to hear from a fellow former Physics Today employee that you are looking into Jeff Schmidt's firing. I was a coworker of Jeff's during the time that he was writing his book, and I think you might be interested in my own experience in devoting some office time to freelance writing. The bottom line is that I find it difficult to believe that the real reason for Jeff's dismissal is that he didn't spend 100 percent of his time in the office on Physics Today work.

I was a member of the editorial staff at Physics Today in New York from early 1991 through late 1993. I am now a director at the Tenderloin Neighborhood Development Corporation in San Francisco, California, where I have worked since 1995.

At Physics Today, my immediate supervisors were Barbara Levi, Gloria Lubkin and Kenneth McNaughton. Theresa Braun was the Director of Human Resources.

I was responsible for editing the "We Hear That" department of the magazine, which consisted mainly of articles about awards and obituaries. Usually, I edited about 5 to 10 obituaries and wrote 1 to 3 awards articles per month. I also edited the calendar section of the magazine and copyedited 1 to 2 feature articles per month.

While at Physics Today, I wrote some articles for small magazines, notably Lies of Our Times (now defunct). That magazine published one long piece detailing scientists' participation in the Gulf War ("The Gulf War and the Technologists," March 1992), as well as several shorter items. I spent upwards of 20 hours working on the long article, of which at least 15 hours were spent at work. (On the other pieces that I wrote while at Physics Today, I would generally write about 80 percent of the article at work and rest at home.) I did all the writing on my computer at work and read all the source material while at work, because the article was based on scientific magazines and publications received by Physics Today. I did this openly and spoke with coworkers about the article. No one ever said anything about my working on this piece.

It was my understanding that AIP, as an institution, encouraged the practice of its employees doing outside writing. Employees of the Institute's history division, for example, published books that were understood to have been written on company time. To my knowledge the Institute never had a policy against its employees pursuing and publishing writing outside the Institute, and doing such work on company time. In general, if I completed my responsibilities in a timely way, I was not given additional work to fill my time.

I hope this information helps in your investigation. I would be happy to address any questions you may have, and so please feel free to contact me. Jeff's firing is a real injustice and would set a bad precedent if left unchallenged. I hope you will take action to reverse it.

Sincerely,

Christopher Mohr San Francisco, CA cmohr@tndc.org Prince George's County
HUMAN RELATIONS COMMISSION
1400 McCormick Drive, Suite 245
Largo, Maryland 20774
Telephone (301) 883-6170

IN THE MATTER OF:

Jeff Schmidt Complainant

Vs.

RE: HRC Case No.: RF00-1135

EEOC Case No.: 12HA10020

American Institute of Physics Respondent

COMMISSION ORDER

The Human Relations Commission having been petitioned to review the actions of the Executive Director in the administrative dismissal of the above-referenced complaint, received the recommendations of the Employment Panel, which reviewed the file in this matter.

The Commission at its regularly scheduled meeting on Monday, July 22, 2002, voted to adopt the recommendations of the Employment Panel and Executive Director in re-opening said complaint.

Under Section 2-197(c) of Division 12, Prince George's Code, 1991 edition, as amended, any party aggrieved by a final decision of the COMMISSSION in a contested case is entitled to file and appeal pursuant to Subtitle B of the Maryland Rules of Procedure, Annotated Code of Maryland, within thirty (30), days from the date last entered above.

SAMUEL N. FONTAINE

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Chairberson

Prince George's County

Human Relations Commission

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Prince George's County
HUMAN RELATIONS COMMISSION
1400 McCormick Drive, Suite 245
Largo, Maryland 20774
Telephone (301) 883-6170

IN THE MATTER OF:

Jeff Schmidt

Complainant

Vs.

RE: HRC Case No.: RF00-1135

EEOC Case No.: 12HA10020

American Institute of Physics

Respondent

COMMISSION ORDER

The Human Relations Commission having been petitioned to review the actions of the Executive Director in the administrative dismissal of the above-referenced complaint, received the recommendations of the Employment Panel, which reviewed the file in this matter and supported the actions of the Executive Director.

The Commission at its regularly scheduled meeting on June 28, 2004, voted to adopt the recommendations of the Employment Panel and the actions of the Executive Director in dismissing said complaint as undisturbed.

SAMUEL N. FONTAINE

Chairperson

Prince George's County

Human Relations Commission

THE PRINCE GEORGE'S COUNTY GOVERNMENT HUMAN RELATIONS COMMISSION 1400 McCormick Drive, Suite 245 Largo, MD 20774

WASHINGTON DC 20008

JEFF SCHMIDT

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

JEFF SCHMIDT,))
Plaintiff,)
v.) Case No. 04-cv-3774
AMERICAN INSTITUTE OF PHYSICS,) Judge: Alexander Williams
Defendant.)
)

STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED AND CONSOLIDATED COMPLAINT

On May 30, 2003, Dr. Jeff Schmidt ("Dr. Schmidt") filed a complaint <u>pro se</u> against defendant American Institute of Physics ("AIP") in the Superior Court of the District of Columbia, which alleged inter alia that AIP's termination of Dr. Schmidt's employment constituted a breach of contract and violated 42 U.S.C. § 1983. This case was removed to the United States District Court for the District of Columbia and subsequently transferred to this Court.

Dr. Schmidt's original complaint did not contain a cause of action under 42 U.S.C. § 1981.

Counsel for Dr. Schmidt was retained on or about April 30, 2004, one month before the statute of limitations for a § 1981 claim expired. Recognizing that a motion to amend may not have been decided before the expiration of the statute of limitations, on May 28, 2004 counsel for Dr. Schmidt filed a separate 42 U.S.C. § 1981 complaint in the District Court for the District of Columbia to protect Dr. Schmidt's claim. See Docket No. 1:04cv00867. The District Court for the District of Columbia transferred Dr. Schmidt's § 1983 claim to the District Court for the District of Maryland on September 14, 2004. See Case No. 8:04-cv-02946 (AW).

In addition, Dr. Schmidt is incorporating a previously filed claim under Title VII of the Civil Rights Act of 1964, as amended, in 1991, 42 U.S.C. §§ 2000e, et seq., (Title VII). On July 20, 2004, Dr. Schmidt received a Dismissal and Notice of Rights letter from Acting Director Marie M. Tomasso of the U.S. Equal Employment Opportunity Commission notifying him that he had exhausted his administrative remedies and has a right to bring a private action within 90 days. Recognizing that the 90 days to file an action was about to run, on October 7, 2004, Dr. Schmidt filed a Title VII claim in the United States District Court for the District of Maryland. See Case No. 8:04-cv-03270 (AW). Dr. Schmidt subsequently amended his Title VII claim as permitted as a matter of course by Rule 15(a) of the Federal Rules of Civil Procedure on December 8, 2004. For the efficiency and convenience of the Court, Plaintiff now files this motion for leave to amend to more fully set forth the facts and circumstances surrounding the violation of Dr. Schmidt's civil rights under 42 U.S.C. § 1983 and to consolidate the three pending complaints.

Rule 15(a) of the Federal Rules of Civil Procedure provides for liberal amendment of pleadings and expressly states that leave to amend "shall be freely given when justice so requires." In the leading case construing this rule, <u>Foman v. Davis</u>, 371 U.S. 178, 182 (1962), the United States Supreme Court held that:

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. – the leave sought should, as the rules require, be "freely given."

<u>Id.</u>; see also <u>Diggs by Diggs v. Housing Authority</u>, 67 F. Supp. 2d 522, 529 (D. Md. 1999). For the reasons set forth in <u>Foman</u> as discussed in greater detail below, this Court should grant Plaintiff's Motion for Leave to File First Amended and Consolidated Complaint.

The proposed First Amended and Consolidated Complaint supplements the May 30, 2003 complaint by more fully detailing the factual background and the legal allegations that support the causes of action that initially were filed <u>pro se</u>. The amendment also incorporates the previously filed 42 U.S.C. § 1981 and Title VII claims for the convenience of the court and in the interest of judicial economy.

Courts routinely grant motions to amend in circumstances just like these. See Gordon v. Leeke, 574 F.2d 1147, 1152-53 (4th Cir. 1978) (holding that a pro se plaintiff should be given the opportunity to amend his 42 U.S.C. § 1983). The Court noted that its role was not to

act as an advocate for a <u>pro se</u> litigant; but when such a litigant has alleged a cause of action which may be meritorious against a person or persons unknown, the district court should afford him a reasonable opportunity to determine the correct person or persons against whom the claim is asserted, advise him how to proceed and direct or permit amendment of the pleadings to bring that person or persons before the court.

<u>Id.</u> at 1153. Indeed, under <u>Gordon</u>, a district court has the discretion to either appoint a *pro se* plaintiff counsel or advised him in such a way that his "colorable claim" was presented properly to the court. <u>Id</u> at 1152-53 (stating that if a <u>pro se</u> plaintiff has a "colorable claim . . . the district court should appoint counsel to assist him"). Thus, Mr. Schmidt, now represented by counsel, should be permitted to amend his complaint so as to more fully and appropriately allege a claim for damages under 42 U.S.C. § 1983.

In addition to the <u>Gordon</u> Court, District courts outside the Fourth Circuit have permitted <u>pro se</u> plaintiffs to amend their original complaint for the sake of judicial economy to include related employment discrimination claims in similar circumstances. <u>See Childers v. Mineta</u>, 205 F.R.D. 29, 32-33 (D.D.C. 2001). The <u>Childers</u> case involved a <u>pro se</u> plaintiff who later received a court appointed lawyer to handle her employment discrimination case against a government agency. <u>See id.</u> at 30. In addition to the claims before the court, the plaintiff in <u>Childers</u> was simultaneously litigating additional claims against the defendant through the administrative process. The government agency issued a Final

Agency Decision on June 18, 2001, which left plaintiff with 90 days to bring an action in the district court. The plaintiff filed a motion to amend her original complaint on August 23, 2001. Recognizing that the statute of limitations might expire prior to the court's ruling on the motion to amend, the plaintiff filed a separate action pertaining to the claims raised in the administrative process. The new claim stemmed from the same misconduct and defendants as the original complaint.

The Court granted the motion to amend and held that <u>pro se</u> litigants should receive "more latitude than parties represented by counsel." <u>Id.</u> at 31. The court further determined that the additional claims in the amended complaint involved many of the same facts and "[bore] a significant relationship to the original claims. . . ." <u>Id.</u> In addition, the court combined the two civil actions in the interest of judicial economy.

In granting motions to amend, the Fourth Circuit has held that "pro se complaints are held to less stringent standards than those drafted by attorneys." Martin v. Cox, 1994 U.S. App. LEXIS 26200, at *3 (4th Cir. Sept. 21, 1994). In the instant matter, the proposed changes stem from the same facts and parties. The proposed amendments to the complaint "do not radically alter the nature and scope of [the] litigation." Childers, 205 F.R.D. at 33 (D.D.C. 2001). To the contrary, the amendment streamlines the case by, among other things, consolidating previously filed claims into a single complaint. Moreover, amending the complaint will not unduly prejudice the defendant. This case remains in its preliminary stages (e.g., discovery has not commenced). Justice and fairness dictate that plaintiff be permitted to amend the complaint in order to clarify the claims and to promote the efficient disposition of this matter.

Accordingly, plaintiff respectfully requests that this Court grant his Motion for Leave to File First Amended and Consolidated Complaint.¹

¹ A copy of Plaintiff's proposed First Amended and Consolidated Complaint is attached hereto as Exhibit A.

Respectfully submitted,

Patricia G. Butler (#12844)

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Dated: December 10, 2004

Attorneys for Plaintiff